



General Assembly

Distr.: General
5 February 2003

Original: English

Ad Hoc Committee for the Negotiation of a Convention against Corruption

Fifth session

Vienna, 10-21 March 2003

Item 3 of the provisional agenda*

Consideration of the draft United Nations Convention against Corruption

Revised draft United Nations Convention against Corruption

Preamble¹

[*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,

* A/AC.261/14.

¹ 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 1977,² the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,³ 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 1997,⁴ 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 1997,⁵ 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 1998,⁶ the Criminal Law Convention on

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

³ See E/1996/99.

⁴ *Official Journal of the European Communities*, C 195, 25 June 1997.

⁵ E/CN.15/1998/6/Add.1, chap. I.

⁶ E/CN.15/1998/6/Add.2, chap. I.

Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁷ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,^{8, 9}

Concerned that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, as well as to international efforts to promote economic development worldwide,¹⁰

Recognizing that international cooperation is essential to the fight against corruption,¹¹

Determined to prevent, deter and detect in a more effective manner international transfers of assets illicitly acquired by, through or on behalf of public officials and to recover such assets on behalf of victims of crime and legitimate owners,¹²

Acknowledging the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights,¹³

[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];

⁷ Council of Europe, *European Treaty Series*, No. 173.

⁸ *Ibid.*, No. 174.

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

¹⁰ This paragraph was moved to the preamble from a preambular section formerly included in chapter V of the draft convention, pursuant to an agreement reached at the fourth session of the Ad Hoc Committee.

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[(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 2¹⁴

Definitions [Use of terms]

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.] [“Public official” shall also mean any person performing any function for a municipal or local self-government body];¹⁵

[(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];

¹⁴ Subparagraphs (f)-(k) and (o)-(x) of this article were not discussed at the fourth session of the Ad Hoc Committee. Thorough consideration of these subparagraphs will be undertaken at the third reading of the draft convention.

¹⁵ It should be recalled that article 63 included a proposed definition of “public official”. At its fourth session, the Ad Hoc Committee decided that all proposed definitions of article 63 should be incorporated into article 2. All elements of the proposed definition previously included in article 63 have been incorporated into this subparagraph and subparagraph (c).

[(d) “Official of a public international organization” shall mean an international civil servant or any other person who carries out equivalent functions for a public international organization;]^{16, 17, 18}

[(e) “Public international organization” shall mean an intergovernmental organization;]^{19, 20, 21}

(f) “[Assets or]²² 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]²³ 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];²⁴

¹⁶ The text of subparagraphs (d) and (e) was drafted by an informal working group at the request of the Vice-Chairman with responsibility for this chapter of the draft convention at the fourth session of the Ad Hoc Committee.

¹⁷ It should be noted that this formulation, which includes the word “public”, would mean that the text of the draft convention would need to be amended to include the word “public” wherever the words “international organization” appeared, as, for instance, in article 19 bis.

¹⁸ China expressed a preference for a more restrictive definition, limited to international civil servants. In this case reference could be made in the relevant articles of the draft convention to “international civil servants”, as in the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, the “Organized Crime Convention”), instead of “officials of an international organization”, and a separate definition would not be necessary.

¹⁹ Most delegations represented in the informal working group established at the fourth session of the Ad Hoc Committee considered that it was not necessary to include a definition of “public international organization” since the term was well understood in international law. However, if it was thought necessary to define it, this option, drawn from the 1969 Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232), was preferred.

²⁰ No delegation represented in the informal working group considered that organizations other than public international organizations in this sense (for instance, non-governmental organizations or inter-State commercial enterprises) should be included. If such entities were to be included, then specific reference would have to be made.

²¹ While the informal working group decided to put forward the above proposals for subparagraphs (d) and (e), it was also noted that another option would be to subsume the definition of “official of a public international organization” into the definition of “foreign public official”. The last sentence of article 2, subparagraph (c), would then read: “It shall also mean an international civil servant or any other person who carries out equivalent functions for a public international organization.” It was decided against this option for reasons of clarity.

²² This phrase was included in the proposal of the United States of America previously contained in article 63 of the draft text (A/AC.261/3/Rev.1/Add.1). At its fourth session, the Ad Hoc Committee decided to incorporate into article 2 the proposed definitions previously contained in article 63.

²³ Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

²⁴ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

Option 1

(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]²⁵ [including delivery, as appropriate];²⁶

Option 2

(i) “Confiscation”, which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;²⁷

(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]²⁸ as defined in article [...] [Criminalization of the laundering of proceeds of crime] of this Convention;

(k) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into [into or through]²⁹ 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];^{30, 31}

²⁵ Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

²⁶ The insertion of these words was a proposal of Turkey (A/AC.261/IPM/22). Yemen supported this proposal at the third session of the Ad Hoc Committee.

²⁷ This definition was previously contained in article 63 and was incorporated into article 2 pursuant to a decision of the Ad Hoc Committee at its fourth session. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this definition required clarification. Further, those delegations held the view that the concept of title passing to the State carrying out the confiscation might not be appropriate for the purpose of chapter V, as it would contradict the notion that illicitly acquired assets belonged to the State of origin. Some delegations suggested that, for the purposes of this chapter, the definition of confiscation should be extended to include return or restitution of assets.

²⁸ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

²⁹ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

³⁰ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

³¹ The Russian Federation proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee.

Option 1^{32, 33}

(l) “Corruption” shall mean engaging in 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;³⁴

Option 2

(l) Notwithstanding the acts of corruption generally recognized in various legal jurisdictions, the use of the term “corruption” in this Convention shall include such acts as are provided in this Convention and are criminalized pursuant to chapter III, whether attributed to a public or private official, and any other acts that the State Party may have criminalized or defined as acts of corruption under its domestic law or may so criminalize or define in future.

Nothing herein shall limit the future criminalization of further acts of corruption or the adoption of measures to combat such acts.^{35, 36}

³² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was a continued difference of opinion about whether the draft convention should include a definition of corruption. The Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, coordinated by Pakistan, for the purpose of reviewing subparagraphs (l)-(n) and producing a consolidated formulation of those subparagraphs. The product of the working group is reflected in options 1 and 2. The Ad Hoc Committee did not review this text after its distribution. It should be recalled that a number of delegations maintained a strong preference for not including a definition of corruption in the draft convention.

³³ The informal working group decided to recommend the deletion of former subparagraphs (m) and (n). There were two distinct approaches towards the definition of “corruption” in the informal working group. One approach was to provide a general definition of corruption as a concept and the other approach was to refer to corruption only as a term to be used in the text of the future convention. The informal working group therefore recommended that the Ad Hoc Committee consider the following two options during the third reading of the draft text.

³⁴ This formulation was based on a previous proposal made by Ukraine and is similar in large part to the previous formulation of subparagraph (l). That formulation was favoured by those who supported the general approach to the definition.

³⁵ This formulation was based on proposals made by Botswana and Pakistan, supported by those who favoured the restrictive approach. Certain members of the informal working group who opposed the retention of the definition expressed willingness to go along if the restrictive approach was followed, whereby the use of the term “corruption” was made with reference to the text of the future convention only. For instance, the United Kingdom of Great Britain and Northern Ireland later provided a proposal reading:

“Notwithstanding the varying acts that may constitute corruption in different jurisdictions, the use of the term ‘corruption’ in this Convention shall include [offences covered by this Convention] [those acts criminalized in chapter III of this Convention] and any other corrupt acts as defined by the laws of each State Party. Nothing herein shall limit the future criminalization of further acts of corruption or the adoption of measures to combat such acts.”

³⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Republic of Korea proposed to add the following text at the end of subparagraph (l) (A/AC.261/L.156):
“; the act of violating laws and subordinate statutes in using the budget of, acquiring, managing or disposing of property of or entering into and executing contracts with public agencies, thereby causing damage to the property of such agencies.”

(m) “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]³⁷ and could constitute or be connected with unlawful activities in general;^{38, 39}

(n) “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;^{40, 41}

(o) “Transfer of assets derived from acts of corruption” shall mean [...];⁴²

(p) “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 located⁴³ to the affected State Party, even if they have been transformed, converted or disguised;⁴⁴

(q) “Illicit enrichment” shall mean [...];⁴⁵

(r) “Conflict of interest” shall mean a situation in which the personal, family or economic interests of a public official affect the impartial discharge by him or her of the duties incumbent upon him or her as the holder of the position, post or commission;⁴⁶

(s) “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

³⁷ Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

³⁸ Proposed by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

³⁹ Germany proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee, noting that the term was used in the Organized Crime Convention without being defined.

⁴⁰ Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

⁴¹ Some delegations proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee.

⁴² Proposed by Colombia (A/AC.261/IPM/14).

⁴³ This phrase is included in order to obviate the need to define the term “receiving State Party”.

⁴⁴ Proposed by Colombia at the third session of the Ad Hoc Committee (A/AC.261/L.94).

⁴⁵ Proposed by Colombia (A/AC.261/IPM/14).

⁴⁶ Proposed by Argentina at the third session of the Ad Hoc Committee (A/AC.261/L.136).

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:

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;⁴⁷

(t) “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;⁴⁸

(u) “Effective collaborator”⁴⁹ shall mean any natural or legal person that provides relevant help in the investigation or prosecution of a corruption offence;⁵⁰

(v) “Affected State Party” shall mean any State Party that has suffered or is suffering losses to public treasury assets;⁵¹

(w) “Illicitly acquired assets” shall mean assets or property that are acquired by, through or on behalf of a public official through misappropriation, theft or embezzlement of public funds or the unlawful conversion of state property or through acts of bribery or extortion committed by a public official and shall include other property into which such assets have been transformed or converted;^{52, 53, 54}

(x) “Requested State” shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

⁴⁷ Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

⁴⁸ Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

⁴⁹ It is suggested that the words “effective collaborator” should replace the word “whistle-blower” wherever it appears in the draft convention.

⁵⁰ This text was proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117). During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Mexico proposed the deletion of this definition, because the expression no longer appears in the draft convention as a result of the reformulation of articles 13 and 43.

⁵¹ Proposed by Colombia at the fourth session of the Ad Hoc Committee (A/AC.261/L.155).

⁵² During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words “public official” should be replaced with the words “public or private official”. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Other delegations reiterated that they could not accept this change.

⁵³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested a more general formulation, along the lines of “offences covered by this Convention”, instead of a listing of specific offences. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

⁵⁴ Subparagraphs (w)-(y) were previously included in article 63 and were moved here following a decision of the Ad Hoc Committee at its fourth session.

(y) “Requesting State” shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets.^{55, 56, 57}

*Article 3*⁵⁸

*Scope of application*⁵⁹

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]⁶⁰ corruption and [other]⁶¹ criminal acts related specifically to corruption [and to the confiscation and return of assets and proceeds derived from corruption],⁶² irrespective of whether they involve public officials or have been committed in the course of business activity.⁶³

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.]⁶⁴

⁵⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that subparagraphs (x) and (y) should be deleted, as they were unnecessary. Some delegations suggested that instead of these definitions, a definition of “affected State” should be added.

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ This article was not discussed at the fourth session of the Ad Hoc Committee. Thorough consideration of this article will be undertaken at the third reading of the draft convention.

⁵⁹ The text of this article reflects proposals submitted by Governments during the third session of the Ad Hoc Committee.

⁶⁰ Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

⁶¹ Proposed by Belarus at the third session of the Ad Hoc Committee (A/AC.261/L.91).

⁶² Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

⁶³ 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.

⁶⁴ 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 draft 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.

Article 4⁶⁵
Protection of sovereignty⁶⁶

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]⁶⁷ 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.⁶⁸

[3. The provision of this article is a fundamental provision and any provision of any article contrary to it shall be disregarded.]⁶⁹

II. Preventive measures⁷⁰

[*Article 4 bis*⁷¹
[...]]

Each State Party agrees, to the extent appropriate and consistent with its legal system, to consider⁷² to implement those preventive measures set out in this Convention by legislative, administrative or other appropriate measures.]

⁶⁵ This article was not discussed at the fourth session of the Ad Hoc Committee. Thorough consideration of this article will be undertaken at the third reading of the draft convention.

⁶⁶ The text of this article reflects proposals submitted by Governments during the third session of the Ad Hoc Committee.

⁶⁷ Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

⁶⁸ 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.”

⁶⁹ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

⁷⁰ 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.

⁷¹ 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 (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).

⁷² 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”.

Article 5⁷³

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].⁷⁴

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].⁷⁵

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their vulnerability to corruption⁷⁶ [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 bis⁷⁷

[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:

⁷³ 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.

⁷⁴ 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.

⁷⁵ 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".

⁷⁶ 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".

⁷⁷ 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.

- (a) Implementing the policies referred to in article 5 of this Convention;
- (b) Overseeing and coordinating the implementation of those policies, where appropriate;⁷⁸
- [(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.]
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 6⁷⁹
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,⁸⁰ promotion [and retirement] of civil servants and, where appropriate, other non-elected public officials:⁸¹
- (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;

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ 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.

⁸¹ The use of the terms in this article should be re-examined after the second reading of article 2 (Definitions [Use of terms]).

(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.

[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 interests⁸² [, assets, debts] and sources of income and, where appropriate, [by making public the information contained in such declarations].^{83, 84}

*[Article 6 bis
Elected public officials⁸⁵*

In addition to the measures provided for in article 6,⁸⁶ each State Party shall also take appropriate legislative and administrative measures⁸⁷ 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.]

⁸² 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.

⁸³ 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.

⁸⁴ 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).

⁸⁵ 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.

⁸⁶ The parameters for the appointment of civil servants set out in article 6 would also be applicable, where appropriate, to elected public officials.

⁸⁷ 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 7⁸⁸**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.]⁸⁹

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.]⁹⁰

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

⁸⁸ 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.

⁸⁹ 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."

⁹⁰ 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, were of the opinion that they should not be so closely linked.

[(a) Employment, investments [or responsibilities]⁹¹ 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 8⁹²

Public procurement and public financial management⁹³

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;

⁹¹ 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.

⁹² 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).

⁹³ 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 provide for 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 9⁹⁴
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 bis⁹⁵
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 may⁹⁶ 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.⁹⁷

⁹⁴ 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.

⁹⁵ 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.

⁹⁶ 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”.

⁹⁷ Following the second reading of the draft text, at the third session of the Ad Hoc Committee, China proposed an amended version of this article (A/AC.261/L.150).

*Article 10*⁹⁸
*Funding of political parties*⁹⁹

1. Each State Party shall adopt, maintain and strengthen¹⁰⁰ measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

- (a) To prevent conflicts of interest;¹⁰¹
- (b) To preserve the integrity of democratic political structures and processes;
- (c) To proscribe¹⁰² the use of funds acquired through illegal and corrupt practices to finance political parties; and¹⁰³
- (d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.¹⁰⁴

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.¹⁰⁵

⁹⁸ 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.

⁹⁹ One delegation suggested that, if this article were included, it would necessitate a definition of the term "political party".

¹⁰⁰ 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".

¹⁰¹ Several delegations called for this concept to be better defined.

¹⁰² Some delegations suggested replacing this word with the word "prohibit" or the words "eliminate the possibility of".

¹⁰³ 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”

¹⁰⁴ Egypt proposed the addition of the words "and their sources" at the end of this subparagraph.

¹⁰⁵ 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 11¹⁰⁶
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;]¹⁰⁷

(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]¹⁰⁸ of this Convention, and, where appropriate, other expenses incurred in the furtherance of corrupt conduct.^{109, 110}

¹⁰⁶ 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.

¹⁰⁷ Subparagraph (c) might be deleted after consideration of article 14 (Measures to combat money-laundering).

¹⁰⁸ 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".

¹⁰⁹ Reservations were expressed by one delegation regarding the mandatory nature of paragraph 2.

¹¹⁰ 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*¹¹¹*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:¹¹²

- (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,¹¹³ 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*¹¹⁴*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

¹¹¹ 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.

¹¹² Reference to other articles in the draft convention can only be made once chapter III, on criminalization, has been finalized.

¹¹³ The term “private entities” will need to be defined and discussed further when this proposal is considered.

¹¹⁴ 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^{115, 116}

*Measures to combat money-laundering [resulting from corruption]*¹¹⁷

1. Each State Party:

- (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

¹¹⁵ 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 that discussion, several delegations expressed the wish to use the text of article 7 of the Organized Crime Convention. 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.

¹¹⁶ 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.

¹¹⁷ Proposed by Lebanon.

organizations]¹¹⁸ [persons or legal entities that provide formal or informal services for the transmission of money or value]¹¹⁹ and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect [money-laundering mechanisms]¹²⁰ all forms of money-laundering, which regime shall emphasize requirements for customer [or beneficial owner]¹²¹ identification, record-keeping and the reporting of suspicious [or unusual]¹²² transactions [and assessment of the legitimacy of sources];¹²³

(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,]¹²⁴ analysis and [, where appropriate,]¹²⁵ dissemination of information [received through reports of suspicious or unusual transactions]¹²⁶ 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.]¹²⁷

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:

(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.]¹²⁸

¹¹⁸ Departure from the text of article 7 of the Organized Crime Convention.

¹¹⁹ Proposed by the United States.

¹²⁰ Departure from the text of article 7 of the Organized Crime Convention.

¹²¹ Proposed by Switzerland.

¹²² Departure from the text of article 7 of the Organized Crime Convention.

¹²³ Proposed by Pakistan.

¹²⁴ Departure from the text of article 7 of the Organized Crime Convention.

¹²⁵ Departure from the text of article 7 of the Organized Crime Convention.

¹²⁶ Departure from the text of article 7 of the Organized Crime Convention.

¹²⁷ Proposed by Cuba.

¹²⁸ Proposed by the United States.

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]¹²⁹ 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.]¹³⁰

[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.]¹³¹

[Articles 15-18 were deleted.]

III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement¹³²

Article 19¹³³

[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:

¹²⁹ Proposed by Pakistan.

¹³⁰ Proposed by Ukraine.

¹³¹ Proposed by Ukraine.

¹³² As it had indicated at the third session of the Ad Hoc Committee, the delegation of the Russian Federation submitted to the Ad Hoc Committee at its fourth session a proposal that would seek to consolidate the criminalization articles of this chapter (A/AC.261/L.163). That proposal was submitted for the third reading of the draft text.

¹³³ 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.

(a) The promise, offering or giving to a public official [or a person who performs public functions],¹³⁴ 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],¹³⁵ 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*¹³⁶

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 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].]

[Article 20 was replaced with article 30, as redrafted during the fourth session of the Ad Hoc Committee.]

¹³⁴ The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

¹³⁵ The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

¹³⁶ The text of this article (A/AC.261/L.135, as amended in document A/AC.261/L.137) incorporates comments made during the 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 were of 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.

Article 21¹³⁷
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.

Article 22¹³⁸
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,]¹³⁹ [or the misuse],¹⁴⁰ 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.

¹³⁷ 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.

¹³⁸ 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.

¹³⁹ 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.

¹⁴⁰ “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.

Article 23
*Concealment*¹⁴¹

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,]¹⁴² 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.¹⁴³

[*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*¹⁴⁴
*Illicit enrichment*¹⁴⁵

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

¹⁴¹ 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.

¹⁴² 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.

¹⁴³ 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.”

¹⁴⁴ 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.

¹⁴⁵ 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.

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.¹⁴⁶

3. Any State Party that has not established illicit enrichment as an offence shall [insofar as its laws permit,¹⁴⁷] provide assistance and cooperation with respect to this offence as provided for in this Convention.¹⁴⁸

[Article 26¹⁴⁹

*Use of classified or confidential information*¹⁵⁰

Option 1¹⁵¹

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper¹⁵² use by a public official or a person who performs public functions,¹⁵³ 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.

¹⁴⁶ Some delegations were of the view that paragraph 2 might not be necessary.

¹⁴⁷ Many delegations were of the view that the words between brackets in paragraph 3 should be deleted.

¹⁴⁸ Many delegations were in favour of deleting paragraph 3 in its entirety.

¹⁴⁹ 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.

¹⁵⁰ 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.

¹⁵¹ 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.

¹⁵² Several delegations were of the view that a more appropriate word was needed.

¹⁵³ One delegation proposed amending this phrase to read "or any other person, as defined in article 3 of this Convention".

Option 2¹⁵⁴

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;

(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 28¹⁵⁵
*Improper benefits*¹⁵⁶

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.]

¹⁵⁴ Proposed by Colombia (A/AC.261/IPM/14).

¹⁵⁵ 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.

¹⁵⁶ 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.

[Article 29¹⁵⁷
*Other criminal offences*¹⁵⁸

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.]

[Articles 30 and 30 bis were moved and renumbered articles 38 bis and 38 ter.]

[Article 31 was deleted.]

Article 32¹⁵⁹
Corruption in the private sector

1. Each State Party shall [consider adopting] adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally [by major entities] [in the course of business activity] [and when public interests are affected]:¹⁶⁰

(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 [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector];¹⁶¹

(b) The solicitation or acceptance, directly or indirectly, of any 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 [in relation to an

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

¹⁵⁸ 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.

¹⁵⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed serious misgivings about retaining this article and attempting to establish a global legally binding treaty obligation to criminalize purely private sector corruption. Those delegations also noted that the issue of private sector corruption could distract negotiators from achieving workable solutions on other important issues.

¹⁶⁰ A number of delegations indicated that the scope of this article would need to be limited by some link to the public interest.

¹⁶¹ Additional text proposed by Mexico.

economic, financial or commercial transaction, which results in harm to that entity of the private sector].¹⁶²

[2. Each State Party shall also consider adopting legislative measures to ensure that high-level officials of a private sector institution are punished with the penalties foreseen for the crime of embezzlement by public officials under similar circumstances whenever the private sector institution concerned is conducting a financial activity or whenever the acts committed by such private sector officials affect public economic interests. The private sector institutions covered by this article should include, but should not necessarily be limited to, banks and private finance institutions operating in the areas of borrowing and utilization of money, assets or instrumentalities belonging to private persons.]¹⁶³

Article 33

Laundering of proceeds of corruption

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;

[(iii) 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.]¹⁶⁴

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

¹⁶² Additional text proposed by Mexico.

¹⁶³ Text proposed by Turkey.

¹⁶⁴ Some delegations expressed concern about establishing what appears to be a negligence standard for money-laundering.

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;¹⁶⁵

[(b) Each State Party shall include as predicate offences all offences established in accordance with this Convention;]¹⁶⁶

(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;

(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;]¹⁶⁷

[(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.]¹⁶⁸

¹⁶⁵ 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. These positions were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

¹⁶⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations expressed concerns about the scope of the predicate offences, which were similar to those related to the previous paragraph. This issue will need to be resolved after clarity is achieved regarding the contents of the criminalization articles of the future convention.

¹⁶⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this subparagraph was not necessary. Some other delegations argued in favour of its retention.

¹⁶⁸ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this subparagraph would not be necessary if article 30 bis was agreed upon.

Article 34¹⁶⁹
Accounting 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 37¹⁷⁰
Obstruction of justice

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

Article 38
Liability of legal persons

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.

¹⁶⁹ This article was 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. Those concerns were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Some delegations added that the current formulation was overly broad and raised the same concerns as for article 32. The Ad Hoc Committee agreed with the suggestion of the Vice-Chairman guiding the discussion on this article at its fourth session that this article should be considered in conjunction with article 12 at the third reading of the draft text.

¹⁷⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this article was not necessary.

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.

Article 38 bis

[Complicity, instigation or attempt [Complicity in, instigation of or attempt to commit a crime]]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation as an accomplice [assistant] [instigator] [or in any other capacity] in an offence established in accordance with articles [...] ¹⁷¹ of this Convention.

[2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with articles [...] ¹⁷² of this Convention.]

[3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with articles [...] ¹⁷³ of this Convention.]

*Article 38 ter*¹⁷⁴

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.

¹⁷¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 2 or paragraph 3 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

¹⁷² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 1 or paragraph 3 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

¹⁷³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 1 or paragraph 2 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

¹⁷⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations indicated that they might wish to revert to this article at the third reading, as they had doubts about the need to retain it.

[Article 39¹⁷⁵
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.]

Article 40
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to take such measures as necessary to limit the scope of any immunity and any jurisdictional privilege of its public officials with respect to the investigation, prosecution and adjudication of offences established in accordance with this Convention under its legal system to what is strictly necessary in order to guarantee to persons entitled to such privileges and immunities adequate protection in the exercise of their function.¹⁷⁶

3. Each State Party shall endeavour to ensure that any [discretionary] legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.¹⁷⁷

5. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave [and special] nature of the offences covered by

¹⁷⁵ This article was 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. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, a decision on the retention or deletion of this article was deferred until the finalization of article 5 bis.

¹⁷⁶ The text of this paragraph was produced by 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 fourth session of the Ad Hoc Committee after the second reading of the draft text.

¹⁷⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations held the view that this paragraph should be deleted. Many delegations supported its retention, especially in view of the fact that the text was reproduced from the Organized Crime Convention and had been approved unanimously in that Convention.

this Convention when considering the eventuality of early release or parole of persons convicted of such offences.¹⁷⁸

6. Where a public official is accused of an offence under this Convention, each State Party shall consider the possibility of suspending the public official from his or her post, office or functions or relocating him or her within an organization, as a precautionary measure, where such action is warranted by the gravity of the offence and is advisable for the conduct or continuation of investigations or the protection of significant public interests. Any suspension or relocation should be for a reasonable period¹⁷⁹ of time and exercised with due regard for the presumption of innocence.¹⁸⁰ Suspension or relocation of a public official on this basis should be without permanent prejudice to the responsibility assigned to the accused public official.¹⁸¹

7. (a) Where warranted by the gravity of the offence, each State Party shall consider the possibility of disqualifying, by court order or any other appropriate means, for a reasonable period of time,¹⁸² persons convicted of offences covered by this Convention from:

- (i) Holding public office;¹⁸³
- (ii) Holding office in a parastatal enterprise; and
- (iii) Holding office in a legal person incorporated within the jurisdiction of the State Party¹⁸⁴ unless rehabilitated;

(b) Each State Party shall also consider the possibility of establishing a register or national record of persons subject to disqualification with a view to

¹⁷⁸ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed the deletion of this paragraph, while some delegations expressed concern about its mandatory nature.

¹⁷⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation commented that the phrase "reasonable period" was not useful, as it was not clear who would determine what was "reasonable".

¹⁸⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations noted that this provision would be contrary to the presumption of innocence as it operated in their domestic legal systems.

¹⁸¹ The text of this paragraph and paragraph 7 was produced at the fourth session of the Ad Hoc Committee by an informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention and coordinated by Australia. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations questioned the need for paragraph 6.

¹⁸² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation commented that the phrase "reasonable period" was not useful, as it was not clear who would determine what was "reasonable".

¹⁸³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations highlighted the need to consider disqualification from public office given the importance of the public sector in addressing corruption. Some delegations indicated that this might be impossible where there were constitutionally mandated eligibility requirements for public office holders.

¹⁸⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations could not consider implementing this type of provision in the private sector because it would violate the right to work.

preventing them from being hired by other organizations during the period of disqualification.^{185, 186}

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials [or international civil servants]. In determining the criminal sanctions to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.¹⁸⁷

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

*Article 40 bis*¹⁸⁸
Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that it has established in accordance with this Convention and a longer period or its suspension where the alleged offender has evaded the administration of justice.

[Article 41 was deleted.]

Article 42
[Seizure and confiscation] [Freezing, seizure and confiscation]

1. Each State Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

¹⁸⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations noted that a register of persons subject to disqualification would be impractical in application and would compromise domestic privacy laws. Those delegations wanted to make it clear at the outset that they would not be able to implement the provision. Some delegations also noted that the provision would raise constitutional issues.

¹⁸⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations questioned the need for paragraph 7 and expressed concern that the provision would apply to low-level conduct, could affect the operation of small companies and could be subject to abuse for political purposes. Other delegations commented on the optional nature of the provision and the potential utility of such a provision for some countries in the fight against corruption.

¹⁸⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed the deletion of this paragraph.

¹⁸⁸ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.¹⁸⁹

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual¹⁹⁰ confiscation.

[3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized, confiscated or abandoned property that is the proceeds of crime by the competent authorities in accordance with its domestic law.]

[4. Each State Party shall also take measures to consider and execute requests for the interim freezing and seizure of proceeds of corruption in the possession of the offender, whether being kept in his or her own name or in the name of his or her friends, associates, relatives or accomplices, for a reasonable period of time necessary for investigation or trial and shall also establish mechanisms to consider claims by any person against the frozen assets.]

5. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.¹⁹¹

6. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation [or civil forfeiture] up to [at least] the assessed value of the intermingled proceeds [up to the total value of the proceeds of crime].

7. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

8. For the purpose of this article and article [...] [International cooperation for confiscation] of this Convention, each State Party shall empower its courts or

¹⁸⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the nature of instrumentalities would need to be examined if there was to be clarity about the breadth of the offences covered by the future convention. This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

¹⁹⁰ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to replace the word “eventual” with the word “possible” (see A/AC.261/L.49/Add.1). This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

¹⁹¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, India suggested that if the definition of proceeds of crime was extended to include such proceeds that had been transformed or converted, there would be no reason to retain this paragraph.

other competent authorities to order that bank,¹⁹² financial or commercial records be made available or seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.¹⁹³

9. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with fundamental principles of their domestic law and with the nature of judicial and other proceedings.¹⁹⁴

10. The provision of this article shall not be construed to prejudice the rights of bona fide third parties.

11. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

[*Article 42 bis*¹⁹⁵
Bank secrecy

States Parties shall ensure that appropriate mechanisms are available within their domestic legal systems to overcome obstacles to the investigation of offences covered by this Convention that may arise out of the application of bank secrecy laws.]¹⁹⁶

*Article 43*¹⁹⁷
Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from retaliation or potential intimidation for witnesses and experts who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

¹⁹² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Pakistan proposed the insertion of the words “and account”. Morocco suggested that the procedure for records to be made available should be specified.

¹⁹³ The brackets around the last sentence of this paragraph were removed at the suggestion of the informal working group established after the second reading of article 58.

¹⁹⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Yemen expressed concern about the use of the words “and with the nature of judicial and other proceedings”.

¹⁹⁵ The text of this article is a proposal submitted at the fourth session of the Ad Hoc Committee by the United States, which coordinated an informal working group following the second reading of article 58 of the draft convention and pursuant to a request by the Vice-Chairman with responsibility for chapter III of the draft convention. The Ad Hoc Committee did not review the text after its distribution.

¹⁹⁶ One delegation proposed an alternative formulation: “States Parties shall ensure that appropriate mechanisms are available within their domestic legal systems to allow the investigation of offences covered by this Convention, notwithstanding any bank secrecy laws.”

¹⁹⁷ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Egypt, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.^{198, 199}

*Article 43 bis*²⁰⁰

Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and with reasonable grounds to the competent authorities any incident concerning offences covered by this Convention.

¹⁹⁸ Formerly article 45, option 1, paragraph 2. This paragraph has been placed here on the recommendation of the informal working group coordinated by Mexico, which produced the revised text of articles 44 and 45. The Ad Hoc Committee did not review this paragraph after its distribution.

¹⁹⁹ Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Republic of Korea proposed that the following new paragraph be added after paragraph 4 of this article (A/AC.261/L.161):

“[...] If ‘whistle-blowing’ has resulted in the direct recovery or increase of revenues belonging to public agencies or in savings on their part, the ‘whistle-blower’ may request the competent authorities to pay him or her a reward and the requested authorities shall pay him or her an appropriate reward.”

²⁰⁰ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Egypt, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention. This article could be considered during the third reading in connection with article 7.

*Article 44*²⁰¹*Consequences of acts of corruption*

With due regard to the legitimately acquired rights of third [affected]²⁰² parties, States Parties shall adopt measures [as may be necessary],²⁰³ in accordance with fundamental principles of their domestic law, to address consequences of corruption. In this context, States Parties may, for example, consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 45^{204, 205}*Compensation for damages*

Each State Party shall adopt measures as may be necessary, in accordance with fundamental principles of its domestic law, to ensure that entities or persons²⁰⁶ who have suffered damage as a result of an act of corruption²⁰⁷ have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

*Article 46*²⁰⁸*Measures to enhance cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established by this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

²⁰¹ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

²⁰² Proposal submitted by the United States.

²⁰³ Addition proposed by the Netherlands.

²⁰⁴ Canada reserves its position on this article.

²⁰⁵ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

²⁰⁶ Indonesia suggested replacing the words “entities or persons” with the words “either the State or corporation”.

²⁰⁷ The term “acts of corruption” in this article is subject to the final result of the discussion on the definition of “acts of corruption” in article 2.

²⁰⁸ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, France, the Netherlands and the Russian Federation following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.76).

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article [...] [Protection of witnesses and victims] of this Convention in accordance with domestic law.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

*[Article 47 was deleted.]*²⁰⁹

Article 48

Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between public authorities, as well as public officials, and its authorities responsible for investigating and prosecuting criminal offences. Such measures may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with articles [...] [Criminalization of corruption involving a public official], [...] [Criminalization of corruption in the private sector] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 48 bis

Cooperation between the private sector and national authorities

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between the national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of criminal offences covered by this Convention.

[2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of a criminal offence covered by this Convention.]

²⁰⁹ Article 47 was deleted during the first reading of the draft text, at the second session of the Ad Hoc Committee, as it was identical to article 59 of the draft text.

Article 49
Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction²¹⁰ in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 50
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established by the States Parties in accordance with this Convention when:

(a) The offence is committed [in whole or in part] in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.²¹¹

2. Subject to article [...] [Protection of sovereignty] of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

[(d) The offence is committed against the State Party; or]

[(e) The offence is committed against the affected State Party, as established in this Convention.]²¹²

²¹⁰ The *travaux préparatoires* should indicate that the term “conviction” should be understood to refer to a conviction no longer subject to appeal.

²¹¹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States proposed that this subparagraph be moved to paragraph 2. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the United States again noted that final resolution of this subparagraph would depend on the substantive offences established under chapter III.

²¹² Subparagraphs (d) and (e) were previously subparagraphs (c) and (c bis) of paragraph 1 and were moved to paragraph 2 during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Many delegations were in favour of their deletion. Some delegations were of the view that the subparagraphs were necessary, although they acknowledged that they overlapped.

3. For the purposes of article [...] [Extradition] of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. A State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same [or related] conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

IV. Promoting and strengthening international cooperation

[Article 50 bis²¹³

International cooperation

1. 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.]

[2. In addition to article 53, paragraph 8, of this Convention, States Parties shall consider adopting legislative and administrative measures to provide that assistance in relation to investigations of administrative offences and civil and

²¹³ 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 review this text after its distribution. The original submission contained only one paragraph. Paragraph 2 has been inserted as a proposal of the informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58.

administrative proceedings shall not be refused on the ground of bank secrecy [or taxation provisions].]^{214, 215, 216}

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.²¹⁷

[2. 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.]²¹⁸

3. 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.²¹⁹

²¹⁴ The informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58 was of the view that this was the best place to place the words from article 64, former paragraph 2, that the Vice-Chairman requested that the working group consider in the context of article 58. However, delegations had different views as to whether it was desirable to include the bracketed language at all.

²¹⁵ Two other formulations were suggested by delegations:

“In addition to paragraph 8 of article 53, States Parties shall consider adopting legislative and administrative measures to provide that assistance in relation to proceedings other than criminal proceedings shall not be refused on the ground of bank secrecy [or taxation provisions].”

The second proposed alternative was to replace article 50 bis with the following: “In addition to paragraph 8 of article 53, States Parties shall consider assisting each other to the extent possible under their domestic legal system in civil and administrative proceedings related to offences covered by this Convention.”

²¹⁶ Some delegations indicated that they had serious difficulties with this paragraph and could not adopt such measures.

²¹⁷ 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. Other delegations felt that this language was an inappropriate transplant from the Organized Crime Convention that needed to be clarified.

²¹⁸ 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 review this proposal after its distribution.

²¹⁹ 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 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.

4. 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.]²²⁰

5. 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 no extradition treaty, it may [shall]²²¹ consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

²²⁰ 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 15 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 15 referred to the motivation of the request for extradition.

²²¹ While some delegations supported the use of "shall" in this paragraph, other delegations said that such a change would contravene established international practice in this area and strongly favoured retaining the formulation from the Organized Crime Convention. Some delegations indicated that such a change would be impossible for them to accept.

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.

11. 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.

12. 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 11 of this article.

13. 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.

14. 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.

15. 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.²²²

²²² 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 15 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. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations indicated that this idea should also be included in article 53.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.²²³

17. 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.

18. 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.

Article 53

*Mutual legal assistance*²²⁴

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations,²²⁵ prosecutions and judicial proceedings in relation to the offences covered by this Convention.^{226, 227}

²²³ 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.

²²⁴ 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.

²²⁵ 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 draft convention (see article 50 bis above).

²²⁶ 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.

²²⁷ 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.”

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;
- (j) Identifying, freezing and tracing funds of illicit origin derived from acts of corruption;
- (k) Returning such funds to their countries of origin.]²²⁸

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,

²²⁸ 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.

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.²²⁹

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.²³⁰

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.²³¹

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:

²²⁹ 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. Some other delegations argued strongly in favour of its retention.

²³⁰ 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. An informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58 recommended that the Ad Hoc Committee consider the text of paragraphs 1 (with the exception of the first sentence) and 2 of article 58 (as contained in document A/AC.261/Rev.1/Add.1) in the context of this paragraph. The text of these paragraphs is as follows:

“1. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

“2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.”

²³¹ 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.

(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;²³²

(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 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

²³² 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).

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.²³³

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 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

²³³ The *travaux préparatoires* should indicate that many of the costs arising in connection with compliance with requests made pursuant to 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.

effectiveness of law enforcement action to combat the offences covered by this Convention.²³⁴ Each State Party shall, in particular, adopt effective measures:

(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,²³⁵ 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;

(d) 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;²³⁶

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) 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

²³⁴ Regarding the formulation to express the scope of the assistance, consistency with paragraph 1 of article 51 would need to be ensured, once a decision had been reached on whether the text in square brackets contained in that paragraph would be deemed preferable.

²³⁵ 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.

²³⁶ 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.

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.²³⁷

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.

Article 57²³⁸
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;

²³⁷ 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.”

²³⁸ 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 review the revised text after its distribution.

(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.²³⁹

2. 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.

3. 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.

4. 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.

5. 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.²⁴⁰

*[Article 58 was deleted]*²⁴¹

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.

²³⁹ Some delegations indicated that paragraph 1 could be moved to article 73.

²⁴⁰ 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.

²⁴¹ 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 of the draft convention established an informal working group, coordinated by the United States, to produce a revised text of this article. The informal working group proposed the deletion of this article on the following understanding: (a) The inclusion of a second paragraph in article 50 bis; (b) the insertion of paragraphs 1 (without the first sentence) and 2 of article 58 in the footnote attached to paragraph 8 of article 53, noting that Mexico wished those paragraphs to be considered in that context; (c) the deletion of the brackets in paragraph 8 of article 53 and around the last sentence of paragraph 8 of article 42; and (d) the reformulation of paragraph 3 of article 58 and its inclusion in the draft text as new article 42 bis. The Ad Hoc Committee did not have the opportunity to review the proposal of the informal working group at its fourth session.

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.

V. Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds²⁴²

Article 60²⁴³

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities²⁴⁴ referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with [articles [...] [Recovery mechanisms], paragraph (b), and] [...] [Confiscation and seizure], paragraph 1, of this Convention

²⁴² For the second reading, at the fourth session of the Ad Hoc Committee, it was decided to consider the articles of chapter V of the draft convention in the following order: 64, 65, 67, 60, 68-70, 61, 71, 62, 66 and 72. The Ad Hoc Committee will follow the same order at the third reading of the draft text.

²⁴³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was agreement to maintain this article in chapter V and to retain its current formulation, for consideration at the third reading. The current draft text of this article incorporates elements from articles 67, 69, 70 and 72.

²⁴⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that the term “illicitly acquired assets” should be used here for the sake of consistency with the rest of this chapter. Other delegations pointed out that this article was designed to deal with all proceeds of crime more broadly.

insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, situated in the territory of the requested State Party;

[(c) Take such other measures as may be permissible under its domestic law to effect the recovery of such assets.]²⁴⁵

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.²⁴⁶

3. The provisions of articles [...] [Mutual legal assistance] [and [...] [Bank secrecy]]²⁴⁷ of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article [...] [Mutual legal assistance], paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated [, including to the extent possible the location and value of the property]²⁴⁸ and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law [, including a description of the illegal activity and its relationship to the assets to be confiscated];²⁴⁹

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested [, a statement specifying the measures taken by the requesting State Party to provide adequate notification to third parties and to ensure due process and a statement that the confiscation order is final, enforceable [and not subject to ordinary means of appeal]];²⁵⁰

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested. [In addition:

(i) If enforcement of a restraining or seizure order is sought, a legally admissible copy of such order, information as to the extent to which execution of the order is requested and a statement specifying the measures that have

²⁴⁵ Formerly paragraph 3 (d) of article 68.

²⁴⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Algeria proposed the addition of the following sentence at the end of this paragraph: "The requested State Party shall inform the requesting State Party of the due diligence undertaken in handling the request for freezing, seizure and confiscation throughout the duration of the procedure."

²⁴⁷ Taken from article 70.

²⁴⁸ Taken from article 69.

²⁴⁹ Taken from article 69.

²⁵⁰ Taken from article 69.

been or will be taken to provide adequate notification to third parties and to ensure due process; and

(ii) If restraint is sought based upon a foreign arrest or charge, a legally admissible copy of such order;]²⁵¹

[(d) In the case of a request pertaining to this article, a statement identifying, to the extent known, the legal and natural persons whom the requesting State Party believes to be victims, whether public or private.]²⁵²

[4. States Parties shall execute requests for assistance in the recovery of illicitly acquired assets pursuant to this article as a fundamental purpose of this Convention and to the full extent possible under their domestic law.]²⁵³

5. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

6. Each State Party shall furnish copies of its laws and regulations that give effect to [this article] [this chapter]²⁵⁴ and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.²⁵⁵

7. If a State Party elects to make the taking of the measures referred to in [paragraphs 1 and 2 of this article] [this chapter]²⁵⁶ conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

8. Cooperation under this article may be refused [or provisional measures lifted]²⁵⁷ by a State Party if the offence to which the request relates is not an offence covered by this Convention [, the requested State Party does not receive sufficient or timely evidence regarding the underlying offences or the illicit acts constitute minor offences or the illicitly acquired assets are of a *de minimis* value.]^{258, 259}

²⁵¹ Taken from article 69.

²⁵² Taken from article 69.

²⁵³ Taken from article 70.

²⁵⁴ Taken from article 72.

²⁵⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed to move this paragraph to the implementation provisions in the final chapter of the draft convention.

²⁵⁶ Taken from article 72.

²⁵⁷ Taken from article 70.

²⁵⁸ Taken from article 70.

²⁵⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed to replace the words “covered by this Convention” with the words “established by the States Parties in accordance with this Convention”. Other delegations were not in favour of that proposal.

[9. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.]²⁶⁰

10. The provisions of this article shall [be in conformity with principles of due process and shall]²⁶¹ not be construed to prejudice the rights of bona fide third parties.

11. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to [this article] [this chapter].²⁶²

*Article 61*²⁶³

Option 1²⁶⁴

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of

²⁶⁰ Taken from article 70.

²⁶¹ Taken from article 70.

²⁶² Taken from article 72.

²⁶³ At its fourth session, the Ad Hoc Committee decided to consider this article together with article 71. Proposals regarding this article were made by Algeria (A/AC.261/L.171) and France (A/AC.261/L.158). Following an extensive debate, the Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, chaired by Switzerland, and requested it to produce a revised text for articles 61 and 71, considering also article 62 and taking into account the existing text of article 61, option 1, article 71, the proposals of Algeria and France, the proposal of Pakistan (A/AC.261/11) and the comments made during the discussion. The informal working group requested its chairperson to prepare a consolidated text, which could be considered by the working group, possibly at the fifth session of the Ad Hoc Committee. Following the debate mentioned above, France submitted a revised proposal (A/AC.261/L.158/Rev.1), according to which the words “or, in the case of embezzled public funds, reimburse such public funds” would be deleted from paragraph 2 and a new paragraph would be added to read as follows:

“(…) Notwithstanding the provisions of paragraphs 1, 2 and 3 of this article, for offences of embezzlement of public funds or of laundering of embezzled public funds, as referred to in articles [...] [Embezzlement, misappropriation, [other] diversion or [misuse] of property by a public official] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention, where the confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation], paragraph 1 (b), of this Convention on the basis of a final decision by a court in the territory of the requesting State Party, the requested State Party shall return to the requesting State Party the confiscated property, as defined in article [...] [Confiscation and seizure], paragraph 1, of this Convention, in accordance with ways and means to be defined by bilateral agreement or arrangement between the States Parties concerned. The requested State Party shall deduct from the amounts returned all costs incurred by it in the course of the procedure.”

²⁶⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 14 of the Organized Crime Convention, with a slight change to para. 2 in order to include embezzled public funds). During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations considered this option a good basis for further consideration of this article.

by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds of crime or property to their legitimate owners or, in the case of embezzled public funds, reimburse such public funds.

3. When acting on the request made by another State Party in accordance with article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation] of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Option 2²⁶⁵

Disposal of confiscated proceeds of crime or property and the return of such proceeds to their countries of origin or to countries or persons authorized to receive them

1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

2. Each State Party shall adopt, in accordance with the fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent

²⁶⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

4. When acting on the request made by another State Party in accordance with articles [...] [Confiscation and seizure] and [...] [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

Article 62^{266, 267}

Return of property to the country of origin in cases of damage to state property

1. Notwithstanding the provisions of articles [...] [Confiscation and seizure], [...] [International cooperation for the purposes of confiscation] and [...] [Disposal of confiscated proceeds] of this Convention, each State Party shall adopt such measures as may be necessary to enable its central authorities or agencies with relevant responsibilities to return to the country of origin property constituting proceeds of crime that has been obtained to the detriment of that country.

2. In such cases, the property shall not be subject to the system of sharing between the requesting State and the requested State.

[Article 63 was deleted.]

Article 64²⁶⁸

Specific provisions²⁶⁹

1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including

²⁶⁶ This text was taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was the view of the Ad Hoc Committee that this article would need to be considered in conjunction with articles 60, 61, 68 and 71 at the second reading of the draft text. Also during the first reading, Zambia proposed the deletion of this article, as it considered that its contents were adequately covered in article 61 (see A/AC.261/L.71).

²⁶⁷ See footnote 263.

²⁶⁸ The text of this article is taken from a proposal submitted by Peru (A/AC.261/IPM/11). During the first reading of the draft text, at the second session of the Ad Hoc Committee, China proposed a new formulation for this article (see A/AC.261/L.82). During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, a number of delegations pointed out that there were redundancies between this article and other articles of the draft convention.

²⁶⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed that this article should be entitled "Cooperation provisions", "Prevention of transfer and recovery of illicitly acquired assets" or "Cooperation to prevent and combat illicitly acquired assets".

funds, of illicit origin derived from acts of corruption²⁷⁰ by adopting, inter alia, effective measures and mechanisms for:

(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies,²⁷¹ in the detection [and freezing]²⁷² of transfers and transactions involving assets, including funds, of illicit origin derived from acts of corruption;

(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, cooperating with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption; and

(d) Affording one another mutual technical assistance, upon request, in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption.²⁷³

2. For the purposes of this Convention, the recovery of assets, including funds, of illicit origin by the affected countries of origin shall be an [inalienable]²⁷⁴

²⁷⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was pointed out that it would be necessary to ensure consistency in the terminology used throughout this article, in line with the term to be defined in accordance with subparagraph (w) of article 2.

²⁷¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the inclusion of investigative and prosecutorial authorities.

²⁷² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations suggested the deletion of these words, as freezing was not within the competence of the institutions and bodies referred to in this paragraph. Some delegations preferred to retain the wording.

²⁷³ After the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Ad Hoc Committee deferred a decision on the appropriate formulation and placement of this paragraph. Former paragraph 2 was deleted after the second reading of the draft text, at the fourth session of the Ad Hoc Committee, on the understanding that the question of the effect of taxation provisions on judicial and administrative cooperation in preventing and combating corruption would be considered in the context of article 58.

²⁷⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was extensive debate about the appropriateness of this term. Most delegations pointed out that the term had a special meaning, with legal implications that were not pertinent to this convention, and proposed its deletion. Many delegations were conscious of the implications of the term, but thought it was important to have language that would establish the principle that assets and funds of illicit origin belonged to the State of origin. Mexico proposed to amend the paragraph to read as follows:

“2. For the purposes of this Convention, States Parties whose public funds have been embezzled by means of the commission of any of the offences covered by this Convention and have been transferred abroad shall have an exclusive right to the recovery of such funds.”

Pakistan proposed the following reformulation of this paragraph:

“2. For the purposes of this Convention, the title in the illicitly acquired assets derived from acts of corruption, irrespective of their location, shall be deemed to be vested in the affected State from which the assets originated, which shall have the [inalienable] fundamental right to their recovery and to obtain return or transfer of those assets.”

right²⁷⁵ insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.^{276, 277}

Article 65²⁷⁸

Detection [and prevention] of transfers of illicitly acquired assets

1. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

- (a) Issuing advisories to financial institutions:
 - (i) On appropriate measures to identify current and former [senior] [designated]²⁷⁹ foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons;
 - (ii) On appropriate records to maintain on accounts and transactions involving such persons; and
 - (iii) On the types of transactions and accounts to which such institutions should pay particular attention;

²⁷⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations were of the view that this word should also be placed in square brackets.

²⁷⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this paragraph should become the first paragraph of the article. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

²⁷⁷ 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 of the draft convention, requested Mexico and the United Kingdom to coordinate consultations with interested delegations, with a view to formulating a revised proposal on which the Ad Hoc Committee could base further consideration of this paragraph. Those delegations had not submitted a revised text to the Secretariat at the time of submission of the present document.

²⁷⁸ The text of this article is a revised version submitted by the United States, which coordinated an informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention after the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this revised text after its distribution. During the second reading, there was debate about whether there was overlap between this article and article 14. Some delegations suggested that several parts of this article be merged with article 14, while others were of the view that article 14 should be transferred to this chapter and merged with this article.

²⁷⁹ Differing opinions were expressed as to whether enhanced scrutiny was appropriate only for those foreign officials who exercised senior-level responsibilities or also for a broader range of officials, which some delegations believed would be impossible to implement and could defeat the purpose of enhanced scrutiny. Those views were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. During that reading, some delegations suggested that the appropriate term would be “politically exposed persons”, which had been defined by the Basle Committee on Banking Supervision as follows:

“Politically exposed persons (PEPs) are individuals who are or have been entrusted with prominent public functions, including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials.”

One delegation proposed to include also “cohabitants”.

(b) Requiring financial institutions to take reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts [as determined by the regulating and supervising State Party];²⁸⁰

(c) Requiring financial institutions to conduct enhanced scrutiny of high-value accounts [as determined by the regulating and supervising State Party]²⁸¹ sought or maintained by or on behalf of current and former [senior] [designated]²⁸² foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

(d) Requiring financial institutions to report to competent authorities suspicious transactions²⁸³ involving accounts identified in subparagraphs (a), (b) and (c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit notification or disclosure of the report to legal or natural persons involved in the transaction.²⁸⁴

2. States Parties shall [implement] [adopt] measures to ensure that their banking and financial systems and their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from [offences established by this Convention] [offences established by the States Parties in accordance with this Convention] by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to [politicians or]²⁸⁵ public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; [detecting assets, including funds of illicit origin derived from [offences established by this Convention] [offences established by States Parties in accordance with this

²⁸⁰ Some delegations expressed concern that the meaning of the term “high-value account” should be clarified with an amount or to allow for relative differences in economies. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was continued difference of opinion as to whether a definition of this term was necessary.

²⁸¹ See footnote 280.

²⁸² See footnote 281.

²⁸³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Mexico proposed to replace this expression with the words “unusual transactions” in this article, as well as wherever it appears in the draft text.

²⁸⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this paragraph, and especially subparagraphs (b) and (d), should be moved to article 14, while one delegation expressed serious difficulties in accepting subparagraph (b). Some delegations indicated that they did not wish to convert recommendations from other sources on money-laundering best practices into legally binding language. Some delegations questioned how the whole concept of “enhanced scrutiny” could be realistically implemented, while one delegation noted that it was already implementing it.

²⁸⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations identified this concept as being new and proposed deleting it, on the grounds that it might be inappropriate to make such preferential treatment illegal in some contexts. Some other delegations thought this was a useful concept that could be explored further.

Convention]]²⁸⁶ and ordering their freezing; and facilitating the recovery of such assets by their countries of origin.²⁸⁷

3. States Parties shall [implement] [adopt] measures to ensure that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no physical presence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the “know-your-customer” principle and the reporting of suspicious activities.²⁸⁸

4. States Parties shall [implement] [adopt] measures to ensure that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records should contain information relating to the amount of the transaction, the identity and domicile of the participants in the transaction, the legal capacity of anyone participating on behalf of a legal person and the identity of the [true beneficiary]²⁸⁹ of the transfer in question, as well as an exact description of the transaction.²⁹⁰

5. In connection with paragraph 4 of this article, States Parties shall [implement] [adopt] measures to prevent fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the [true owners] of assets, including funds, and that of the [true beneficiaries] of transactions.²⁹¹

6. Each State Party [shall establish] [shall consider establishing], in accordance with its domestic law, effective financial disclosure systems for its [senior] [designated]²⁹² public officials and shall provide for appropriate sanctions for non-compliance. States Parties shall also consider taking such measures as may

²⁸⁶ A number of delegations expressed difficulties about this concept, as they thought it was unclear whether the reference was to the functions of public or private entities. Those delegations were of the view that the problem related to the entire paragraph.

²⁸⁷ A number of delegations were of the view that the elements of this paragraph were sufficiently covered by article 14 and other provisions and thus that this paragraph should be deleted. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 before the third reading of the draft text.

²⁸⁸ Some delegations were of the view that this paragraph should be moved to article 11 or article 14. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 before the third reading of the draft text.

²⁸⁹ Some delegations pointed out that this term should be brought into conformity with the term “beneficial owner” used in article 14. Some other delegations noted that this might be a slightly different concept.

²⁹⁰ Some delegations were of the view that the concepts in this paragraph were redundant (albeit somewhat more detailed) in relation to the concepts in article 14 and other articles and thus that this paragraph could be deleted. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 and other articles before the third reading of the draft text.

²⁹¹ With respect to the terms in square brackets, see footnote 290. Several delegations were of the view that the concept in this paragraph should be moved to paragraph 1 (d) of article 11. Peru, as the author of the paragraph, indicated its intention to review it before the third reading of the draft text. One delegation indicated that the paragraph should not be so drafted as to imply that fictitious companies existed in all countries.

²⁹² Some delegations thought that the word “senior” should be deleted, while some other delegations considered its retention essential. Some delegations were of the view that private sector officials should also be covered.

be necessary to permit their competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.²⁹³

7. Each State Party shall [adopt] [consider adopting] such measures as may be necessary, in accordance with its domestic law, to require [senior] [designated]²⁹⁴ public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.²⁹⁵

[Article 66
Financial intelligence unit]

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and of promoting ways and means of recovering such assets by, inter alia, [appointing or] establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities disclosures of financial information that concern suspected proceeds of crime or are required by national legislation or regulation. If granted permission by the financial intelligence unit providing the information, the recipient financial intelligence unit shall be able to use that information within its territory, in accordance with its national legislation.²⁹⁶

Article 67²⁹⁷
Direct recovery of assets

Each State Party shall, in accordance with principles of its domestic law, allow other States Parties to participate in legal proceedings to recover [illicitly acquired assets] directly and, to that end, shall:

²⁹³ Some delegations indicated that they would have constitutional difficulties with this provision and, at the least, it would need to be made non-mandatory. Some delegations also felt that the provision would fit better in either article 6 or article 7, while others were of the view that it should remain in chapter V.

²⁹⁴ See footnote 293.

²⁹⁵ Some delegations indicated that they would have constitutional difficulties with this provision and, at the least, it would need to be made non-mandatory. Some delegations also felt that the provision would fit better in either article 6 or article 7, while others were of the view that it should remain in chapter V.

²⁹⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the deletion of this article and pointed out inconsistencies with article 14. Other delegations indicated that the last sentence of the article raised serious concerns about the protection of personal data.

²⁹⁷ The text of this article is a revised version submitted by the United States, which coordinated an informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention after the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The informal working group decided to separate the recovery mechanisms that rely on mutual legal assistance procedures and proposed a new article 67 bis that would cover mechanisms for recovery of assets through international cooperation in confiscation. The Ad Hoc Committee did not have the opportunity to review this revised text after its submission.

(a) Adopt such measures as may be necessary to permit another State Party to initiate legal action in its courts for ownership of [illicitly acquired assets] that are located in its territory, by presenting either:

- (i) Evidence to establish title to or ownership of the assets; or
- (ii) A final [civil] judgement establishing title to or ownership of the assets issued by the competent authorities of another State Party, which order may be given effect in the territory of the requested State to the extent permitted by the law of that State Party;

(b) Adopt such measures as may be necessary to authorize its courts to order those who have committed offences under this Convention to pay compensation, damages or penalties to another State Party that may have been harmed by such offences;

(c) Adopt such measures as may be necessary to authorize its courts in confiscation proceedings to adjudicate and recognize another State Party's claim as a legitimate owner of [illicitly acquired assets] prior to ordering confiscation of such property; and

(d) Adopt such other measures as it may deem necessary to facilitate the recovery of [illicitly acquired assets].

Article 67 bis
Mechanisms for recovery of assets through
international cooperation in confiscation

For the purposes of recovering criminal proceeds and enabling mutual legal assistance in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention:

(a) Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of [illicitly acquired assets] and, to that end, shall:

- (i) Adopt such measures as may be necessary to permit its competent authorities to give effect to a final judgement of another State Party ordering the confiscation of [illicitly acquired assets] or the payment of a sum of money corresponding to such assets;
- (ii) Adopt such measures as may be necessary to enable its competent authorities to order the confiscation of [illicitly acquired assets] of foreign origin or the payment of a sum of money corresponding to such assets, including [illicitly acquired assets] involved in money-laundering offences;
- (iii) Consider adopting such measures as may be necessary to allow confiscation of property representing [illicitly acquired assets] without a criminal conviction in cases in which the offender or title holder cannot be prosecuted by reason of death, flight, absence or immunity or in other appropriate cases;

(b) Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to enable it, at the

request of another State Party, promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of assets for which there is a reasonable basis to believe that such assets will be subject to recovery as [illicitly acquired assets] and, to that end, shall:

- (i) Adopt such measures as may be necessary to preserve properly in anticipation of a confiscation action it may bring as the requested State;
- (ii) Adopt such measures as may be necessary to restrain or seize assets based upon a foreign arrest or criminal charge related to the acquisition of such assets;
- (iii) Adopt such measures as may be necessary to give effect to a restraining or seizure order issued by a court of competent jurisdiction of another State Party;
- (iv) Adopt such measures as may be necessary to restrain or seize assets upon a request setting forth a reasonable basis to believe that the property will be named in a confiscation judgement in the requesting State; and
- (v) Adopt such additional measures as it may deem appropriate to preserve property for confiscation.

Article 68

[Special cooperation provisions]

1. States Parties shall cooperate with one another for the purpose of expediting the process of [recognition or] execution of judicial sentences, as appropriate, establishing criminal and civil liability in cases of offences covered by this Convention, in accordance with their domestic law, with a view to facilitating the recovery of illicitly acquired assets.²⁹⁸

2. Upon an appropriate²⁹⁹ request from another State Party, a requested State [Party] shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Detection [and prevention] of transfers of illicitly acquired assets], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.^{300, 301}

3. Each State Party shall adopt measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on illicitly acquired assets to another State Party without prior request,

²⁹⁸ Revised text submitted by Peru following the second reading of the draft text, 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. Some delegations proposed the deletion of this paragraph.

²⁹⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations proposed the deletion of the word "appropriate".

³⁰⁰ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations reiterated the comments they had made during the discussion of article 65 about the use of the adjective "senior". This point was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

³⁰¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations proposed that this paragraph be moved to article 67.

when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that Party under this chapter.³⁰²

*[Article 69 was deleted.]*³⁰³

*[Article 70 was deleted.]*³⁰⁴

*Article 71*³⁰⁵

Disposition of assets

1. Illicitly acquired assets recovered pursuant to this chapter shall be disposed of in accordance with domestic law. When acting on the request of another State Party under this chapter, States Parties shall, to the extent permitted by domestic law:

(a) Give priority consideration to transferring the recovered assets in such a manner as to compensate the victims of the crime or to return the assets to their legitimate owners;

(b) Where appropriate, consider requiring that all or a portion of the recovered assets be used to support anti-corruption initiatives and programmes;

(c) Where appropriate, consider sharing confiscated assets with foreign authorities that assisted in the investigation, prosecution or judicial proceeding leading to the confiscation;

(d) Where appropriate, the requested State may deduct reasonable expenses incurred in the investigation, prosecution or judicial proceeding leading to the recovery of illicitly acquired assets prior to transferring or sharing such recovered assets pursuant to this chapter.

2. Each State Party shall adopt such measures as may be necessary to establish, consistent with principles of its domestic law:

(a) A mechanism for the consideration of claims by another State Party against illicitly acquired assets involved in a confiscation proceeding; and

³⁰² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations proposed the deletion of the paragraph, expressing their preference for paragraph 4 of article 53 as the most appropriate language to deal with this issue.

³⁰³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was decided to delete article 69 because of its similarity with article 60. It was also agreed that any new elements contained in article 69 would be incorporated, in square brackets, into paragraph 3 of article 60. The Vice-Chairman with responsibility for this chapter of the draft convention requested Austria and the United States to identify those new elements. These elements have been incorporated into the revised text of article 60.

³⁰⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was decided to delete article 70 because of its similarity with article 60. It was also agreed that any new elements contained in article 70 would be incorporated, in square brackets, into article 60. The Vice-Chairman with responsibility for this chapter of the draft convention requested the United States to identify those new elements. These elements have been incorporated into the revised text of article 60.

³⁰⁵ See footnote 263.

(b) Authority to share confiscated assets with foreign authorities in recognition of assistance provided that leads to confiscation.

*[Article 72 was deleted.]*³⁰⁶

VI. Technical assistance, training and collection, exchange and analysis of information

*Article 73*³⁰⁷

Collection, exchange and analysis of information on the nature of corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations analytical expertise concerning corruption and information on best practices to prevent and combat corruption. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of preventing, deterring, detecting, investigating and punishing acts of corruption.³⁰⁸

³⁰⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was decided to delete article 72 because of its similarity with articles 60 and 74. It was also agreed that any new elements contained in article 72 would be incorporated, in square brackets, into articles 60 and 74. The Vice-Chairman with responsibility for this chapter of the draft convention requested Canada and the United States to identify those new elements. These elements have been incorporated into articles 60 and 74 as appropriate.

³⁰⁷ The text of this article is a revised proposal submitted by Austria, Mexico and the Netherlands (A/AC.261/L.165) at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this text after its distribution.

³⁰⁸ Following the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico proposed the insertion of a new article, article 73 bis, which would be entitled "Citizen participation" and would read as follows:

"States Parties shall promote and facilitate citizen participation, in conformity with their domestic legislation, in the design of policies for the fight against corruption, in the application of monitoring and evaluation mechanisms and in the development of studies on the causes and effects of corruption."

Article 74³⁰⁹*Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes, which could include secondments and internships, shall be concerned with, inter alia:³¹⁰

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

[(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;]³¹¹

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

[(e) Preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and recovering such assets;]³¹²

[(f) Detecting and freezing of the transfer of assets, including funds, of illicit origin derived from acts of corruption;]³¹³

[(g) Surveillance of the movement of assets, including funds, derived from acts of corruption and of the methods used to transfer, conceal or disguise such assets;]^{314, 315}

[(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of assets, including funds, of illicit origin derived from acts of corruption;]³¹⁶

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

³⁰⁹ The text of this article is a revised version submitted by Canada in consultation with Peru and the United Kingdom at the request of the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The revised version of this article incorporates elements of article 72. The Ad Hoc Committee did not review this revised text after its distribution.

³¹⁰ This text is a combination of the *chapeau* of paragraph 2 of options 1 and 2 and revised subparagraphs from option 2, together with subparagraphs (b) and (c) to make provision for technical assistance to help implement the preventive measures contained in the draft convention.

³¹¹ Text taken from former article 72, paragraph 5.

³¹² Text taken from former article 72, paragraphs 5-7.

³¹³ Text taken from former article 72, paragraphs 5 and 7 (a).

³¹⁴ Text taken from former article 72, paragraph 7 (b).

³¹⁵ Some delegations expressed the view that, as subparagraphs (e)-(g) of this article essentially dealt with money-laundering, they could be replaced by a single subparagraph, which could read as follows: "Effective measures to prevent, detect and combat laundering of money or assets, especially those of illicit origin derived from acts of corruption."

³¹⁶ Text taken from former article 72, paragraph 7 (c).

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, afford [consider offering] one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance, [and the mutual exchange of relevant experience and specialized knowledge,]³¹⁷ which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.³¹⁸

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.³¹⁹

4. States Parties shall [consider] assist[ing] one another in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and [civil]³²⁰ society,³²¹ strategies and action plans to combat corruption.

[5. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.]³²²

6. States Parties shall, when appropriate, use subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern,³²³ [including the special problems and needs of developing countries and countries with economies in transition].

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. States Parties shall consider making voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the Centre,

³¹⁷ Text taken from paragraph 6 of article 72.

³¹⁸ This text, which is based on paragraph 1 and paragraph 4, option 1, of article 74 (as contained in document A/AC.261/3/Rev.1/Add.1), was submitted by Peru.

³¹⁹ This text was taken from paragraph 5, option 1, of article 74 (as contained in document A/AC.261/3/Rev.1/Add.1). The first part of the paragraph was removed, as some delegations argued that there did not appear to be a reason for the paragraph to be limited to existing agreements and arrangements.

³²⁰ Some delegations suggested the deletion of the word "civil".

³²¹ This text is taken from paragraph 2 bis, option 2, of article 74 (as contained in document A/AC.261/3/Rev.1/Add.1).

³²² Some delegations were of the view that, as this paragraph dealt with cooperation rather than technical assistance, it should be moved to article 57 (Other cooperation measures).

³²³ This text, which is based on paragraph 3, option 2, of article 74 (as contained in document A/AC.261/3/Rev.1/Add.1), has been modified to avoid duplication with paragraph 2.

programmes and projects in developing countries with a view to implementing this Convention.³²⁴

Article 75

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.³²⁵

³²⁴ In paragraph 7, option 2, of article 74 (as contained in document A/AC.261/3/Rev.1/Add.1), the word “make” was replaced with the words “consider making”.

³²⁵ Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Germany proposed to add a new article entitled “Exchange of personal information” at the end of this chapter (A/AC.261/L.168).

VII. Mechanisms for monitoring³²⁶ implementation^{327, 328}

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]³²⁹ States Parties to [prevent and]³³⁰ combat [and eradicate]³³¹ corruption and to promote and review the implementation of this Convention [through a systematic follow-up programme].³³²

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

³²⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, a number of delegations were of the view that “monitoring” was not the appropriate expression and should be replaced with “follow-up”.

³²⁷ The Ad Hoc Committee carried out the second reading of this chapter of the draft convention using as the basis for its deliberations the text contained in document A/AC.261/L.162, which is reproduced below.

³²⁸ During the second reading of the draft text of this chapter, at the fourth session of the Ad Hoc Committee, there was extensive debate regarding the question of what would be the appropriate features of a mechanism or system to ensure the implementation of the future convention. Most delegations were of the view that such a mechanism or system would be workable, effective, efficient, transparent, cost-efficient, proportionate, equitable, commanding consensus, consistent across geographical regions and credible. The system should not be too complicated, cumbersome or bureaucratic and it should not be structured in a way that would divert funds required for technical assistance or that would deter participation. Some delegations also wished to see a system that would involve civil society. Most delegations were of the view that the system devised for the implementation of the Organized Crime Convention, with the establishment of a Conference of the Parties and the formulation of a sufficiently general mandate for that body, constituted a good model to follow. For a number of delegations, it would be worthwhile to explore to what extent some departures from the Organized Crime Convention would be justifiable owing to the different nature of this convention. In particular, according to those delegations, it would be worthwhile to explore giving the conference of the parties guidance in the convention about the modalities at its disposal to perform its tasks, while avoiding going into excessive detail. According to those delegations, it would also be important to ensure that the system devised for the convention took into account existing regional mechanisms and strived to avoid unnecessary duplication. For most delegations, the most appropriate approach would be to emulate the Organized Crime Convention, leaving details and procedures up to the conference of the parties to determine. Those delegations expressed the view that additional proposals could certainly be examined, but the Ad Hoc Committee should avoid investing excessive time in exploring details, which could distract it from deliberating on other central provisions of the draft convention. Further, those delegations held the view that a detailed follow-up system, containing a number of mechanisms whose application at the global level was considered doubtful, could make compliance onerous, deterring ratification and implementation, thus resulting in detriment to the Convention. Following the conclusion of the debate, the Vice-Chairman with responsibility for this chapter of the draft convention called for a group of Friends of the Chair to continue exploring the various solutions in order to take stock and try to consolidate and streamline the text, so as to take the process forward.

³²⁹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³³⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³³¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³³² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

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.]³³³

3. [At its first meeting],³³⁴ the Conference of the Parties shall [by consensus agree upon and]³³⁵ adopt rules of procedure and rules governing the activities set forth in paragraph[s] 4³³⁶ [and 6]³³⁷ of this article (including rules concerning payment of expenses incurred in carrying out these activities).³³⁸

4. The Conference of the Parties shall [agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including]:^{339, 340}

[(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;]^{341, 342}

[(b) Conduct [Conducting] annual multilateral evaluations for the periodic review of the implementation of this Convention;]³⁴³

(c) Make [Making] recommendations to improve [this Convention and]³⁴⁴ its implementation;³⁴⁵

(d) Facilitate [Facilitating] the exchange of information among States Parties [on patterns and trends in corruption and on successful practices for combating it];^{346, 347}

[(e) Review [Reviewing] periodically the implementation of this Convention;]^{348, 349}

[(f) Cooperate [Cooperating] with relevant international and regional organizations and non-governmental organizations;]^{350, 351}

³³³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³³⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³³⁵ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³³⁶ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³³⁷ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³³⁸ 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)).

³³⁹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁴⁰ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁴¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁴² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁴³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁴⁴ Text consolidated from the proposals submitted by Austria and the Netherlands (A/AC.261/L.69) and by Colombia (A/AC.261/IPM/14).

³⁴⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁴⁶ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁴⁷ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁴⁸ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁴⁹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁵⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁵¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[(g) Encourage [Encouraging] the mobilization of voluntary contributions to finance the systematic follow-up programme;] and³⁵²

[(h) Promote [Promoting] the establishment of a fund to assist least developed countries in the implementation of this Convention].³⁵³

5. Each State Party shall provide the Conference of the Parties with [the]³⁵⁴ information [that it requires for the systematic follow-up programme concerning]³⁵⁵ [on]³⁵⁶ its programmes, plans, [and] practices [and results],³⁵⁷ as well as information on legislative and administrative measures adopted to implement this Convention [, as required by the Conference of the Parties].^{358, 359}

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.³⁶⁰

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.³⁶¹

Article 76 bis
*Subsidiary body*³⁶² [*Technical body*]³⁶³

Option 1

1. States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.³⁶⁴

³⁵² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵⁶ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁵⁷ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵⁸ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁵⁹ Consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14).

³⁶⁰ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³⁶¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁶² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁶³ Text taken from the proposal submitted by Chile (A/AC.261/L.157).

³⁶⁴ 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".

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.³⁶⁵

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.³⁶⁶

Option 4

1. For the purpose of article [...] [Conference of the Parties to the Convention], paragraphs 4 (c) and (e), of this Convention, the Conference of the Parties shall establish a subsidiary body that shall carry out the functions hereinafter provided.³⁶⁷

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.³⁶⁸

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.³⁶⁹

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.³⁷⁰

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

³⁶⁵ Text taken from the proposal submitted by Egypt (A/AC.261/L.87).

³⁶⁶ Text taken from the proposal submitted by Peru (A/AC.261/L.83).

³⁶⁷ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁶⁸ Text taken from the proposal submitted by Chile (A/AC.261/L.157).

³⁶⁹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

persons thus nominated, indicating those States Parties which have nominated them, and shall submit it to the States Parties to this Convention.³⁷¹

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.³⁷²

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.³⁷³

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.³⁷⁴

8. The subsidiary body shall establish its own rules of procedure.³⁷⁵

9. The meetings of the subsidiary body shall normally be held at the headquarters of the United Nations Office on Drugs and Crime 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.³⁷⁶

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.³⁷⁷

Article 76 ter

*[Reports from States concerning the implementation of the Convention]*³⁷⁸

*[Evaluation of the implementation of the Convention by States Parties]*³⁷⁹

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.³⁸⁰

³⁷¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁵ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁶ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁷ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁸ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁷⁹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁸⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

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.³⁸¹

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.³⁸²

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.³⁸³

5. The subsidiary body shall accept observations submitted to it by civil society organizations and may take into consideration such observations.^{384, 385}

6. The subsidiary body may request from States Parties further information relevant to the implementation of the Convention.³⁸⁶

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.³⁸⁷

*Organization of the evaluation process*³⁸⁸

8. The evaluation process shall be carried out regionally, in Africa, America, Asia, Europe and Oceania.³⁸⁹

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.³⁹⁰

10. Each State Party shall appoint a delegation, consisting of not more than two persons, to the bureau of its region.³⁹¹

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.³⁹²

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

³⁸¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁸² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁸³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁸⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁸⁵ Text taken from the proposal submitted by Chile (A/AC.261/L.157).

³⁸⁶ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

³⁸⁷ Text taken from the proposal submitted by Chile (A/AC.261/L.157).

³⁸⁸ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁸⁹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁰ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹¹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹² Text taken from the proposal submitted by Norway (A/AC.261/L.78).

Parties shall always be present and participate in the evaluation of a State Party by each bureau.³⁹³

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.³⁹⁴

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 1961.³⁹⁵

15. The evaluation process shall be divided into two phases.³⁹⁶

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.³⁹⁷

*Phase I of the evaluation process*³⁹⁸

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.³⁹⁹

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.⁴⁰⁰

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.⁴⁰¹

20. The subsidiary body of the Conference of States Parties and the bureau may, if necessary, require the State Party to provide additional information.⁴⁰²

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

³⁹³ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁴ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁵ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁶ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁷ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁸ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

³⁹⁹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁰ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰¹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰² Text taken from the proposal submitted by Norway (A/AC.261/L.78).

examination of the State Party. The preliminary report shall, as appropriate, contain both a list of requirements and a list of recommendations.⁴⁰³

*Phase 2 of the evaluation process*⁴⁰⁴

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.⁴⁰⁵

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.⁴⁰⁶

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 State concerned.⁴⁰⁷

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.⁴⁰⁸

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 to 5 days and the visit shall be carried out in accordance with the predetermined terms of reference.⁴⁰⁹

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.⁴¹⁰

28. The State Party shall facilitate such visits.⁴¹¹

⁴⁰³ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁴ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁵ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁶ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁷ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁸ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴⁰⁹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁰ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹¹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

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 State Party concerned has provided its comments. The final report shall, as appropriate, consist of both requirements and recommendations.⁴¹²

*Summary reports and measures*⁴¹³

30. The provisions of paragraphs 31 to 33 shall pertain equally to both phases of the evaluation process.⁴¹⁴

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.⁴¹⁵

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. The 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.⁴¹⁶

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.⁴¹⁷

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.⁴¹⁸

35. The reports on each State Party and the summary report described in paragraph 31 of this article shall be made available to the public.⁴¹⁹

36. States Parties shall make their reports widely available to the public in their own countries.⁴²⁰

⁴¹² Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹³ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁴ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁵ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁶ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁷ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴¹⁸ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴¹⁹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

⁴²⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

*Article 77*⁴²¹*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].^{422, 423}

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 Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;⁴²⁴

(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]⁴²⁵ [the subsidiary body as envisaged in article [...] [Reports from States concerning the implementation of the Convention]]⁴²⁶ of this Convention;⁴²⁷

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations;⁴²⁸

[(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];⁴²⁹

(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] of this Convention;⁴³⁰

(f) Offer training courses and technical assistance in improving national anti-corruption strategies; and⁴³¹

(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

⁴²¹ Consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14).

⁴²² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴²³ The texts 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). The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.

⁴²⁴ The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.

⁴²⁵ The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.

⁴²⁶ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴²⁷ The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.

⁴²⁸ The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.

⁴²⁹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴³⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴³¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

particular with regard to the collection of publicly accessible documentation relating to national and international anti-corruption measures.⁴³²

VIII. Final clauses⁴³³

Article 78⁴³⁴

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.⁴³⁵

⁴³² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴³³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman recalled the decision of the Ad Hoc Committee to consider the proposed preamble to the draft convention at the end of the negotiating process, possibly together with the final clauses. However, the Chairman suggested that, for reasons of consistency and in view of the fact that some delegations had made proposals for the final clauses, the Ad Hoc Committee should proceed with a first reading of this chapter on the understanding that its content and the final formulation of its provisions would need to be reviewed once agreement had been reached on the formulation of other provisions of the draft convention. At its fourth session, the Ad Hoc Committee carried out a second reading of those provisions on the same understanding.

⁴³⁴ This article was moved from the previous chapter, to become the first article of chapter VIII of the draft convention, pursuant to a proposal made by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (see A/AC.261/L.85) and accepted by the Ad Hoc Committee.

⁴³⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Chile proposed to add another paragraph to this article (A/AC.261/L.160).

[Article 79⁴³⁶*Relationship to other agreements and arrangements*Option 1⁴³⁷

1. This Convention shall not affect the rights and undertakings derived from international multilateral conventions.
2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or arrangement in lieu of this Convention, if it facilitates international cooperation.

Option 2⁴³⁸

1. This Convention shall prevail over previous multilateral conventions and agreements.
2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention for purposes of supplementing or strengthening its provisions or in the interests of a more effective application of the principles embodied in it.
3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or arrangement in lieu of this Convention insofar as it enhances the effectiveness of its provisions.]

⁴³⁶ During the first reading of the draft text, most delegations recalled the lengthy debate on the issue covered by this article during the negotiation of the Organized Crime Convention. Those delegations emphasized that the solution adopted in that Convention was not to include a specific provision on the relationship with other treaties, thereby leaving the matter to the application of the 1969 Vienna Convention on the Law of Treaties. Those delegations held the view that it would be prudent to adopt a similar solution for the draft convention. Some delegations expressed the view that, as with most matters covered by the final clauses, a determination on whether to include an article on the relationship with other treaties, or on whether to foresee prevalence or subsidiarity of the future convention, was premature. It was, therefore, deemed necessary to retain the two options below for consideration during the second reading of the draft text. Those positions were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

⁴³⁷ Text taken from the proposal submitted by France (A/AC.261/IPM/10). France indicated that the proposed provision was based on article 39 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (United Nations, *Treaty Series*, vol. 1862, No. 31704); paragraph 1 has been slightly amended. France suggested that the aim of the provision was to maintain the commitments undertaken by States in other international instruments.

⁴³⁸ Proposal submitted by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.84).

[Article 79 bis⁴³⁹

*Relationship between the United Nations Convention against Corruption
and its protocols*

1. This Convention may be supplemented by one or more protocols.
2. In order to become a party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.]

Article 80⁴⁴⁰

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 81⁴⁴¹

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

⁴³⁹ Proposal submitted by the United Arab Emirates during the first reading of the draft text, at the second session of the Ad Hoc Committee. A similar proposal had been made by Belarus (see A/AC.261/L.59/Add.2). It should be recalled that paragraphs 2-5 of the proposal submitted by the Philippines, which had appeared as option 2 of this article (A/AC.261/3 (Part IV)) and was withdrawn during the first reading of the draft text, contained text identical to that of this proposal.

⁴⁴⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there were no comments on this article.

⁴⁴¹ During the first and second readings of the draft text, at the second and fourth sessions of the Ad Hoc Committee respectively, there were no comments on this article.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.⁴⁴²

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.⁴⁴³

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 82
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth]⁴⁴⁴ [fortieth]⁴⁴⁵ instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [twentieth] [fortieth] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.⁴⁴⁶

⁴⁴² Text taken from a proposal made by Colombia.

⁴⁴³ The last two sentences of this paragraph were proposed by Colombia.

⁴⁴⁴ Proposal submitted by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.84), and supported by several delegations.

⁴⁴⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations supported this proposal.

⁴⁴⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Japan indicated its intention to submit a proposal regarding this paragraph for consideration by the Ad Hoc Committee during the third reading of the draft text.

Article 83⁴⁴⁷

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 84⁴⁴⁸

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.⁴⁴⁹

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

⁴⁴⁷ During the first and second readings of the draft text, at the second and fourth sessions of the Ad Hoc Committee respectively, there were no comments on this article.

⁴⁴⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.

⁴⁴⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Uganda proposed to amend this paragraph by adding the following new sentence at the end: "Such denunciation shall become effective one year after the date of receipt of notification if the State Party does not have unresolved disputes with another State Party or pending arbitration or a case with any court of justice."

[3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.]

Article 85⁴⁵⁰

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

⁴⁵⁰ During the first and second readings of the draft text, at the second and fourth sessions of the Ad Hoc Committee respectively, there were no comments on this article.