



# General Assembly

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

Fifth session

Vienna, 10-21 March 2003

Agenda item 3

### Consideration of the draft United Nations Convention against Corruption

## Proposals and contributions received from Governments

### Algeria, Colombia and United Kingdom of Great Britain and Northern Ireland: amendments to article 25

#### Article 25: Illicit enrichment

It is proposed to continue work on article 25 on the basis of the following text:<sup>1</sup>

“1. Subject to its Constitution and the fundamental principles of its legal system, each State Party shall take [consider taking]<sup>2</sup> the necessary measures to establish under its laws as an offence, when committed intentionally,<sup>3</sup> illicit enrichment, that is,<sup>4</sup> a significant<sup>5</sup> increase in the assets

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<sup>1</sup> The text of this proposal is a revised version submitted, pursuant to a request by the Chairman, by Algeria, Colombia and the United Kingdom of Great Britain and Northern Ireland, which coordinated an informal working group.

<sup>2</sup> The informal working group felt that the question of the mandatory or optional nature of the article should be decided by the plenary.

<sup>3</sup> This qualification was added to bring the article in line with other articles in chapter III, on criminalization, and to provide an additional measure of reassurance that the provisions of the article would not be used unreasonably.

<sup>4</sup> The informal working group felt that the use of the word “or” in document A/AC.261/3/Rev.3 erroneously implied that illicit enrichment and an unexplainable significant increase in assets were two different offences, whereas the second phrase was effectively a definition of the term “illicit enrichment”. The redraft makes this explicit.

<sup>5</sup> The informal working group came to the conclusion that the word “significant” should be retained as it reflected existing practice in a number of States and provided further reassurance that the provisions of the article would not be used unreasonably. However, it could be deleted if the plenary felt that it implied that a low level of illicit enrichment was to be condoned.



of a public<sup>6</sup> official that he or she cannot reasonably explain in relation to his or her lawful income.”<sup>7, 8</sup>

[*Paragraph 2 is deleted.*<sup>9</sup>]

[*Paragraph 3 is deleted.*<sup>10</sup>]

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- <sup>6</sup> The phrase “government official” that appears in document A/AC.261/3/Rev.3 was amended to make it consistent with the terminology in the rest of the draft convention.
- <sup>7</sup> The English version of document A/AC.261/3/Rev.3 contained the word “earnings”; this was amended to bring it in line with the French and Spanish versions and because there might be legitimate income that had not been earned.
- <sup>8</sup> The remaining phrase in document A/AC.261/3/Rev.3 was deleted since it was possible for a public official to have legitimate income that did not arise from the performance of his or her functions.
- <sup>9</sup> This paragraph was deleted because it arose from a distinction in the Inter-American Convention against Corruption, adopted on 29 March 1996 by the member States of the Organization of American States, that was not reflected in the draft convention.
- <sup>10</sup> This paragraph was deleted because, although the informal working group felt strongly that there was an important issue of dual criminality in relation to offences established in optional articles, this issue was common to a number of articles in the chapter on criminalization and should not be dealt with in article 25 alone. The issue should be taken up by the plenary in its consideration of chapter IV, on promoting and strengthening international cooperation, in the context of aspects such as extradition and mutual legal assistance.