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Consideration of the draft United Nations Convention against Corruption

Proposals and contributions received from Governments

Pakistan: amendments to the proposal on article 61 contained in document A/AC.261/15 and Corr.1¹

Article 61

It is proposed to amend the text of article 61 as proposed by Switzerland (A/AC.261/15 and Corr.1) to read as follows:

*“Article 61
“Return of assets²*

“1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Seizure and confiscation] [Freezing, seizure and confiscation] or [...] [International cooperation for purpose of confiscation] of this Convention shall be returned by that State Party to the requesting State or to the affected State in accordance with the provisions of this Convention.³

“2. Each State Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to take a decision as to whether to return proceeds of crime or property through confiscation measures

* A/AC.261/17.

¹ Submission of the present proposal shall not prejudice the principled position of Pakistan, shared by several other delegations, that there should not be a distinction between “illicitly acquired assets” and “proceeds of crime”.

² The title is amended in order to emphasize one of the dominant concepts in the draft convention.

³ This refers to the possibility of direct return without involving confiscation proceedings.



under this Convention, taking into account the rights of bona fide third parties.⁴

“3. When acting on a request made by another State Party in accordance with article [...] [International cooperation for confiscation] of this Convention, the requested State Party shall, on a priority basis, return the confiscated or non-confiscated proceeds of crime or property to the requesting State Party, which, upon receiving those proceeds of crime or property, may use them to give compensation to the victims of the crime, return them to their legitimate owners, contribute their value towards fulfilling other objectives of this Convention, such as [implementation of the Convention through economic development and technical assistance] [anti-corruption initiatives and programmes], or use them to finance specific development projects.⁵

“4. When appropriate, States Parties may also enter into agreements or arrangements that may be more favourable than the provisions of this article, on a case-by-case basis.

“5. In cases of illicitly acquired assets⁶ and other funds referred to in article [...] [Embezzlement, misappropriation, diversion or misuse of property by a public official] and laundering of such assets, the same shall be returned to the requesting affected State⁷ on the basis of an enforceable judgement in the requesting State, or of a decision taken by the competent authority in the requested State.

“6. The requested State Party fulfilling its obligation under paragraph 5 of this article shall not be entitled to sharing.⁸ However,⁹ where appropriate, unless the States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in the investigations, prosecutions and administrative and judicial proceedings leading to the recovery of illicitly acquired assets prior to returning such recovered assets pursuant to the provisions of articles [...] of this chapter.

⁴ “Third parties” should mean distinct third parties and not economic intermediaries or legal and/or financial consultants. Perhaps this may be so recorded in the *travaux préparatoires*.

⁵ The texts of subparagraphs (a) and (b) of paragraph 4 of the proposal of Switzerland (A/AC.261/15 and Corr.1) have been combined into a single text.

⁶ “Illicitly acquired assets” here include not only embezzled funds (as referred to in the proposal of Switzerland), but also funds diverted from state funds, misappropriation, criminal breach of trust, kickbacks and commissions accumulated from the diversion of such funds.

⁷ “Affected State” is a necessary concept here, along with “illicitly acquired assets”. It could be defined as a State from “whom or from where the assets have been illicitly acquired” in article 2 (Definitions [Use of terms]).

⁸ Concept drawn from the last line in paragraph 3 (b) of the proposal of Switzerland.

⁹ This is almost identical to paragraph 5 of the proposal of Switzerland (A/AC.261/15 and Corr.1).

“7. Where the requesting affected State Party, in making a request pursuant to the provisions of articles [...] of this chapter, presents reasonable grounds for asserting that proceeds of crime referred to in paragraph 1 of this article are indeed derived from illicitly acquired assets, then the requested State will take due account of such an assertion.”¹⁰

¹⁰ This paragraph balances the divergent views that two States may take on the assets in question. The requesting State may view them as illicitly acquired assets and may thus seek their prompt return with or without confiscation, while the requested State may view them as proceeds of crime and thus follow the confiscation mode of return. In such a case, the paragraph proposes that the assertion or finding of fact and determination made on facts by the requesting State must be preferred and respected.