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Ad Hoc Committee for the Negotiation of a Convention against Corruption

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Agenda item 3

Consideration of the draft United Nations Convention against Corruption

Proposals and contributions received from Governments

United States of America: amendment to article 19 bis

Article 19 bis: Bribery of foreign public officials or officials of a public international organization

Paragraph 3

It is proposed to continue work on article 19 bis on the basis of the following text:*

“3. Each State party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public 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 act or refrain from acting in the exercise of his or her official duties in relation to the conduct of international business.

“¹ The *travaux préparatoires* will indicate that paragraph 1 requires that States Parties criminalize active bribery of foreign public officials and paragraph 2 requires only that States Parties ‘consider’ criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs is due to the fact that the core conduct addressed by paragraph 2 is already covered by article 19, which requires that States Parties criminalize the solicitation and acceptance of bribes by their own officials.”

* The text of the present proposal is submitted by the United States of America, who coordinated an informal open-ended working group at the request of the Chairman.



1. The negotiating delegations considered it quite important that any State Party that had not established this offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation of this offence by a State Party that had established it under the Convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice.
 2. The word “intentionally” was included in this paragraph primarily for consistency with paragraph 1 and other provisions of the Convention and is not intended to imply any weakening of the commitment contained in paragraph 2, as it is recognized that a foreign public official cannot “unintentionally” solicit or accept a bribe.
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