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Agenda item 3

Consideration of the draft United Nations Convention against Corruption

Revised draft United Nations Convention against Corruption

Addendum

Article 19 bis

Bribery of foreign public officials and officials of a public international organization¹

1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to 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 order to obtain or retain business or other undue advantage in relation to the conduct of international business.^{2, 3}

¹ The *travaux préparatoires* will indicate that this article is not intended to affect any immunities that foreign public officials or officials of public international organizations may enjoy in accordance with international law. The States Parties noted the relevance of immunities in this context and encourage public international organizations to waive such immunities in appropriate cases.

² The *travaux préparatoires* will indicate that a statute that defined the offence in terms of payments “to induce a breach of the official’s duty” could meet the standard set forth in each of these paragraphs, provided that it was understood that every public official had a duty to exercise judgement or discretion impartially and that this was an “autonomous” definition not requiring proof of the law or regulations of the particular official’s country or international organization.

³ The *travaux préparatoires* will indicate that the phrase “the conduct of international business” is intended to include the provision of international aid.



2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence,⁴ when committed intentionally,⁵ 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.⁶

Article 50 bis
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]. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. Whenever, in matters of international cooperation, dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 51
Extradition

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences established in accordance with this Convention that are not punishable under its own domestic law.

⁴ The *travaux préparatoires* will indicate that 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 and prosecution of this offence by a State Party that had established it in accordance with 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.

⁵ The *travaux préparatoires* will indicate that 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.

⁶ 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.

3. If the request for extradition includes several separate crimes, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to the offences covered by this Convention, the requested State Party may apply this article also in respect of those offences.

Article 53
Mutual legal assistance

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

- (j) Identifying, freezing and tracing the proceeds of offences covered by this Convention, in accordance with the provisions of chapter V;
 - (k) The recovery of assets, in accordance with the provisions of chapter V.
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