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**Ad Hoc Committee for the Negotiation of a
Convention against Corruption**
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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,

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,

* A/AC.261/17.

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 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 Corruption, adopted by the Committee of Ministers of the Council of Europe 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.

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 and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including the return of the proceeds of corruption¹⁴ [to their countries of origin] [to their original sources];¹⁵

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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¹³ 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.

¹⁴ Several delegations expressed their preference for the alternative phrase “, including in the area

[(c) To promote integrity, accountability and good governance.]¹⁶

Article 2

Definitions [Use of terms]

For the purpose of this Convention:¹⁷

(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];¹⁸

(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 [...] [Bribery of foreign public officials or officials of a public international organization] 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];

of asset recovery”.

¹⁵ The Ad Hoc Committee decided to revert to this subparagraph following the conclusion of its deliberations on chapter V of the draft convention.

¹⁶ The Ad Hoc Committee decided to consider this subparagraph at its sixth session. A number of delegations expressed their preference for moving this concept to the preamble.

¹⁷ At its fifth session, the Ad Hoc Committee decided to defer consideration of subparagraphs (a)-(e) until its sixth session. This would enable it to consider also the related proposal of Chile submitted at its fifth session (A/AC.261/L.191).

¹⁸ 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;]^{19, 20, 21}

[(e) “Public international organization” shall mean an intergovernmental organization];^{22, 23, 24}

(f) “Property” shall mean assets²⁵ 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;

(g) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;²⁶

(g bis) “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;²⁷

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ 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.

²⁴ 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.

²⁵ The *travaux préparatoires* will indicate that the phrase “assets of every kind” is understood to include funds and legal rights to assets.

²⁶ The Ad Hoc Committee decided that it would revert to this subparagraph to determine whether it would be necessary to add the phrase “established in accordance with this Convention” in order to qualify the term “offence”.

²⁷ The Ad Hoc Committee decided to revert to this subparagraph following the conclusion of its deliberations on chapter V of the draft 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;²⁸

(i) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court [or other competent authority];²⁹

[Subparagraph (i) of option 2 was deleted.]

(j) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence 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 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;

[Subparagraph (l) of option 1 was deleted.]

(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 the future. Nothing herein shall limit the future criminalization of further acts of corruption or the adoption of measures to combat such acts;³⁰

²⁸ The *travaux préparatoires* will indicate that the word “temporarily” is understood to encompass the concept of renewability.

²⁹ The Ad Hoc Committee decided to revert to this subparagraph at its sixth session.

³⁰ 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.”

At the fifth session of the Ad Hoc Committee, most delegations expressed their preference for the deletion of this subparagraph. The Vice-Chairman with responsibility for this chapter of the draft convention requested the delegation of the United Kingdom to coordinate an informal working group that would work on the basis of the formulation of the rolling text and the variant that appears in this footnote for the purpose of producing a revised version of this subparagraph. The Ad Hoc Committee would revert to this matter at its sixth session.

[Subparagraphs (m)³¹-(o) were deleted.]

(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 located³² to the affected State Party, even if they have been transformed, converted or disguised;³³

[Subparagraphs (q)-(u) were deleted.]³⁴

[(v) “Affected State Party” shall mean any State Party that has suffered or is suffering losses to public treasury assets];³⁵

[Subparagraphs (x) and (y) were deleted.]

Article 3³⁶

Scope of application³⁷

1. This Convention shall apply [, except as otherwise stated herein.] to the prevention, investigation and prosecution of corruption [and criminal acts related specifically to corruption] [and to the freezing, seizure, confiscation and return of assets and proceeds derived from corruption].³⁸

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.

³¹ A note for inclusion in the *travaux préparatoires* will appear when the words “suspicious transaction” is used for the first time in the text of the convention. The note will read as follows: “The phrase ‘suspicious transactions’ may be understood to include unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer’s business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general.”

³² This phrase is included in order to obviate the need to define the term “receiving State Party”.

³³ Proposed by Colombia at the third session of the Ad Hoc Committee (A/AC.261/L.94). The Ad Hoc Committee decided to revert to this subparagraph after conclusion of its deliberations on articles 67 and 67 bis.

³⁴ A definition of the term “conflict of interest” (subpara. (r) in document A/AC.261/3/Rev.3) would be considered if the term was included in chapter II.

³⁵ Proposed by Colombia at the fourth session of the Ad Hoc Committee (A/AC.261/L.155). During the fifth session of the Ad Hoc Committee, Brazil proposed an alternative definition (A/AC.261/L.180). The Vice-Chairman with responsibility for this chapter of the draft convention requested the delegations of Brazil, China, Colombia and Pakistan to make a proposal for consideration by the Ad Hoc Committee at its sixth session. Several delegations questioned whether this term was actually used in the draft convention and whether, in any event, there was need for a definition.

³⁶ In a discussion of this article during the fifth session, several delegations questioned the need for an article on scope of application. Others stressed the importance they attached to retaining one. The Ad Hoc Committee’s discussion of the contents of the article did not extend to paragraphs 2 and 3.

³⁷ The text of this article reflects proposals submitted by Governments during the third session of the Ad Hoc Committee.

³⁸ Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

[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] and [...] [Training and technical assistance] and chapter [...] [Preventive measures] of this Convention.]³⁹

Article 4⁴⁰
Protection of sovereignty⁴¹

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]⁴² 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.⁴³

[3. The provision of this article is a fundamental provision and any provision of any article contrary to it shall be disregarded.]⁴⁴

³⁹ 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.

⁴⁰ 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, at the sixth session of the Ad Hoc Committee.

⁴¹ The text of this article reflects proposals submitted by Governments during the third session of the Ad Hoc Committee.

⁴² Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

⁴³ 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.”

⁴⁴ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

II. Preventive measures^{45, 46}

[*Article 4 bis*⁴⁷

[...]

Each State Party agrees, to the extent appropriate and consistent with its legal system, to consider implementing those preventive measures set out in this Convention by legislative, administrative or other appropriate measures.]⁴⁸

Article 5

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 promote the participation of society and reflect the principles of the rule of law, [good governance,] [good management of the public service,] integrity, transparency and [accountability].

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and administrative measures with a view to determining their adequacy to fight 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 may include participation in international programmes and projects aimed at the prevention of corruption.

⁴⁵ At its fifth session, the Ad Hoc Committee devoted informal consultations to chapter II with a view to facilitating its further deliberations and action on the provisions contained therein. The revised text of articles 4 bis, 5, 5 bis, 6, 6 bis and 7, as it emerged from those informal consultations (A/AC.261/L.196), is reproduced below in order to facilitate consideration of those provisions by the Ad Hoc Committee at its sixth session.

⁴⁶ Several delegations noted that a number of the preventive measures proposed (such as arts. 5, 6, 11 and 12) might result in Governments performing tasks that traditionally lay within the responsibility of their constituent states. Accordingly, those delegations were of the view that the situation of federal states should be taken into account in the further development of those provisions.

⁴⁷ 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).

⁴⁸ During the informal consultations, several delegations suggested that article 4 bis should be considered prior to discussing the other articles in chapter II of the draft convention. Other delegations objected to that proposal. The Vice-Chairman with responsibility for that chapter decided that article 4 bis would be discussed upon completion of the chapter as a whole.

*Article 5 bis*⁴⁹

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 corruption, where appropriate, by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

[Subparagraph (b) was merged with subparagraph (a).]

[Subparagraph (c) was deleted.]⁵⁰

(d) Increasing and disseminating knowledge about the prevention of corruption.

[Subparagraph (e) was deleted.]⁵¹

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material means and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

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 specific measures for the prevention of corruption.

Article 6

Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(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, where appropriate, of such individuals to other positions;

⁴⁹ At the fifth session of the Ad Hoc Committee, Turkey proposed the insertion of a new subparagraph in paragraph 1 (see A/AC.261/L.184).

⁵⁰ At the informal consultations, it was decided to delete subparagraph (c) on the understanding that its content would be taken into account in the discussions on article 13 (Participation of society).

⁵¹ At the informal consultations, it was decided to delete subparagraph (e) on the understanding that its content would be taken into account in the discussions on articles 8 (Public procurement and public financial management), paragraph 2 (a) (iii), and/or 12 (Accounting standards for [the] private sector).

(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. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. The existence of the systems referred to in paragraph 1 of this article shall not prevent States Parties from maintaining or adopting specific measures for disadvantaged groups.⁵²

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.

Article 6 bis
Elected public officials

Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of the present Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria for the appointment of public officials to public office by a process of election.

Article 7
Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, behaviour that favours the promotion of integrity,⁵³ honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

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.

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 note 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.

⁵² During the informal consultations, the view was expressed that this paragraph should not appear in the text of the draft convention and would be more appropriately placed in the notes for the *travaux préparatoires* as clarification of paragraph 1 of this article.

⁵³ One delegation held the view that paragraph 1 should be discussed in conjunction with subparagraph (c) of article 1. Another delegation noted that no consensus had yet been reached on the inclusion of the word “integrity”, and that further discussion might therefore be required.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate public authorities, when such acts come to their notice in the performance of their functions.

[Paragraph 5 was deleted and taken up under article 43.]

6. Each State Party shall endeavour, where appropriate, in accordance with fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, employment, investments, assets and substantial gifts or benefits that may constitute a conflict of interest with respect to their functions as public officials.⁵⁴

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 8⁵⁵

Public procurement and public financial management⁵⁶

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;

⁵⁴ One delegation could not agree with the wording of paragraph 6 and reserved the right to comment on this provision in the plenary.

⁵⁵ 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).

⁵⁶ 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.

(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;

(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 bookkeeping 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 9⁵⁷
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 bis⁵⁸
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 may⁵⁹ by analogy be introduced and applied within the public or state prosecution service in those

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ 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”.

States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.⁶⁰

*Article 10*⁶¹

*Funding of political parties*⁶²

1. Each State Party shall adopt, maintain and strengthen⁶³ measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

- (a) To prevent conflicts of interest;⁶⁴
- (b) To preserve the integrity of democratic political structures and processes;
- (c) To proscribe⁶⁵ the use of funds acquired through illegal and corrupt practices to finance political parties; and⁶⁶
- (d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.⁶⁷

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.⁶⁸

⁶⁰ 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).

⁶¹ 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.

⁶² One delegation suggested that, if this article were included, it would necessitate a definition of the term "political party".

⁶³ 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".

⁶⁴ Several delegations called for this concept to be better defined.

⁶⁵ Some delegations suggested replacing this word with the word "prohibit" or the words "eliminate the possibility of".

⁶⁶ 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”.

⁶⁷ Egypt proposed the addition of the words "and their sources" at the end of this subparagraph.

⁶⁸ 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 11⁶⁹
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;]⁷⁰

(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 [...] [Bribery of national public officials] or [...] [Corruption in the private sector]⁷¹ of this Convention, and, where appropriate, other expenses incurred in the furtherance of corrupt conduct.^{72, 73}

⁶⁹ 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.

⁷⁰ Subparagraph (c) might be deleted after consideration of article 14 (Measures to combat money-laundering [resulting from corruption]).

⁷¹ 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".

⁷² Reservations were expressed by one delegation regarding the mandatory nature of paragraph 2.

⁷³ 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 art. 8 bis). Colombia submitted the text of this new article at the fifth session of the Ad Hoc Committee (see A/AC.261/L.190).

*Article 12⁷⁴**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:⁷⁵

- (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,⁷⁶ 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 13⁷⁷**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

⁷⁴ 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.

⁷⁵ Reference to other articles in the draft convention can only be made once chapter III, on criminalization, has been finalized.

⁷⁶ The term “private entities” will need to be defined and discussed further when this proposal is considered.

⁷⁷ 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 [...] [Preventive 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^{78, 79}

Measures to combat money-laundering [resulting from corruption]⁸⁰

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

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ Proposed by Lebanon.

organizations]⁸¹ [persons or legal entities that provide formal or informal services for the transmission of money or value]⁸² and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect [money-laundering mechanisms]⁸³ all forms of money-laundering, which regime shall emphasize requirements for customer [or beneficial owner]⁸⁴ identification, record-keeping and the reporting of suspicious [or unusual]⁸⁵ transactions [and assessment of the legitimacy of sources];⁸⁶

(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,]⁸⁷ analysis and [, where appropriate,]⁸⁸ dissemination of information [received through reports of suspicious or unusual transactions]⁸⁹ 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.]⁹⁰

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.]⁹¹

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.

⁸¹ Departure from the text of article 7 of the Organized Crime Convention.

⁸² Proposed by the United States.

⁸³ Departure from the text of article 7 of the Organized Crime Convention.

⁸⁴ Proposed by Switzerland.

⁸⁵ Departure from the text of article 7 of the Organized Crime Convention.

⁸⁶ Proposed by Pakistan.

⁸⁷ Departure from the text of article 7 of the Organized Crime Convention.

⁸⁸ Departure from the text of article 7 of the Organized Crime Convention.

⁸⁹ Departure from the text of article 7 of the Organized Crime Convention.

⁹⁰ Proposed by Cuba.

⁹¹ Proposed by the United States.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation [and technical assistance]⁹² 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.]⁹³

[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 [...] [Laundering of proceeds of corruption] and [...] [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.]⁹⁴

[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 enforcement

Article 19

Bribery 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:

(a) The promise, offering or giving to a public official [or a person who performs public functions],⁹⁵ 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],⁹⁶ 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.

⁹² Proposed by Pakistan.

⁹³ Proposed by Ukraine.

⁹⁴ Proposed by Ukraine.

⁹⁵ The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

⁹⁶ The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

Article 19 bis⁹⁷
Bribery of foreign public officials or officials of
a public international organization

1. Each State Party shall adopt⁹⁸ such legislative and 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 acts or refrains 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]⁹⁹ [, at least in the case of breach of such duties].^{100, 101}

[2. States Parties shall consider adopting 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 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 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.]

Article 21¹⁰²
Trading in influence

States Parties shall consider adopting¹⁰³ such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

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- ⁹⁷ Some delegations expressed concerns about the potential effects of paragraph 2 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.
- ⁹⁸ At the fifth session of the Ad Hoc Committee, one delegation argued in favour of a non-mandatory formulation. That delegation indicated that it would require more time to reconsider its position.
- ⁹⁹ Most delegations expressed their wish to have this bracketed text deleted. Some delegations indicated that the mandatory nature of the article depended on including reasonable limitations, which in their view was the effect of the bracketed text.
- ¹⁰⁰ The text within brackets was supported by some delegations during the discussion held at the fifth session of the Ad Hoc Committee.
- ¹⁰¹ The text of this paragraph is a revised version submitted, pursuant to a request by the Chairman, by Japan, which coordinated an informal working group at the fifth session of the Ad Hoc Committee.
- ¹⁰² 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 Canada, France and Italy, which coordinated an informal working group established at the fifth session of the Ad Hoc Committee (A/AC.261/L.182). A number of delegations suggested the deletion of this article.
- ¹⁰³ During the fifth session of the Ad Hoc Committee, a number of delegations held the view that a mandatory formulation would be preferable. A number of delegations felt that the less mandatory formulation would be necessary in order to achieve consensus, especially in view of

(a) The promising, offering or giving, directly or indirectly, to a public official or any other person of any undue advantage in order that the public official or the person 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 decision¹⁰⁴ for the [original instigator of the act] [the offender] or for any other person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;¹⁰⁵

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of any undue advantage for himself or herself or for another person in order that the public official or the person abuse 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, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

Article 22

*Embezzlement, misappropriation or other diversion¹⁰⁶
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 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.

Article 23

Concealment¹⁰⁷

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences of corruption without having participated in such offences, the concealment, continued retention or transmission of movable property or funds or the serving as an intermediary in the transmission or continued retention of such property or funds, when the person involved is aware at the time of receipt that such movable property or funds are the result of any of the offences of corruption as covered by this Convention.

the significantly broad scope of the article.

¹⁰⁴ During the fifth session of the Ad Hoc Committee, several delegations expressed the view that this phrase should be deleted.

¹⁰⁵ During the fifth session of the Ad Hoc Committee, Chile proposed an alternative formulation for this subparagraph (A/AC.261/L.188).

¹⁰⁶ The *travaux préparatoires* will indicate that “diversion” is understood in some countries as separate from “embezzlement” and “misappropriation”, while in others “diversion” is covered by these terms.

¹⁰⁷ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention, by Mexico, Pakistan and Yemen, which coordinated an informal working group at the fifth session of the Ad Hoc Committee (A/AC.261/L.187). The Ad Hoc Committee did not review this text after its distribution.

[Article 24¹⁰⁸
Abuse of functions

Each State Party [may] [shall] consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of his or her functions [or position] by performing or failing to perform an act in violation of laws or regulations 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 economic benefit for himself or herself or for a third party.]

Article 25¹⁰⁹
Illicit enrichment¹¹⁰

Subject to its constitution and the fundamental principles of its legal system, each State Party shall take [consider taking]¹¹¹ the necessary measures to establish under its laws as an offence, when committed intentionally,¹¹² illicit enrichment, that is,¹¹³ a significant¹¹⁴ increase in the assets of a public¹¹⁵ official that he or she cannot reasonably explain in relation to his or her lawful income.^{116, 117}

¹⁰⁸ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention, by Croatia, which coordinated an informal working group at the fifth session of the Ad Hoc Committee, in consultation with Canada and Italy (A/AC.261/L.185). The Ad Hoc Committee did not review this text after its distribution.

¹⁰⁹ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman responsible for this chapter of the draft convention, by Algeria, Colombia and the United Kingdom, which coordinated an informal working group at the fifth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this proposal after its distribution.

¹¹⁰ 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.

¹¹¹ The informal working group felt that the question of the mandatory or optional nature of the article should be decided by the plenary.

¹¹² 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.

¹¹³ 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.

¹¹⁴ 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.

¹¹⁵ 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.

¹¹⁶ 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.

¹¹⁷ The remaining phrase in document A/AC.261/3/Rev.3 was deleted since it was possible for a

*[Paragraph 2 was deleted.]*¹¹⁸

*[Paragraph 3 was deleted.]*¹¹⁹

*[Article 26]*¹²⁰

Improper use of classified or privileged information

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the improper disclosure by a public official for his or her own benefit or for that of a third party, of any kind of classified or privileged information that that official has obtained because of or in the performance of his or her functions.]

[Article 27 was deleted.]

public official to have legitimate income that did not arise from the performance of his or her functions.

¹¹⁸ Paragraph 2 was deleted because it arose from a distinction in the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, that was not reflected in the draft convention.

¹¹⁹ Paragraph 3 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.

¹²⁰ 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 art. 22) and other national penal laws would be sufficient to cover the conduct targeted in this article. 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 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 consult 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. Algeria, Colombia and Mexico submitted this revised version of the article at the fifth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this proposal at its fifth session.

*[Article 28¹²¹
Improper benefits¹²²*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the collection, directly or indirectly, by a public official, 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, for his or her own benefit or for that of a third party.]

[Article 29 was deleted.]

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

[Article 31 was deleted.]

*Article 32¹²³
Corruption in the private sector¹²⁴*

Each State Party shall [consider adopting] [adopt] such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial [international] activities:

(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she act or refrain from acting in breach of his or her duties [, which results in harm to that entity];

(b) The solicitation or acceptance, directly or indirectly, of any undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she

¹²¹ 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 Egypt, Mexico and Peru at the fifth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this text at that session.

¹²² 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.

¹²³ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention, by Italy, which coordinated an informal working group at the fifth session of the Ad Hoc Committee (A/AC.261/L.192). The same working group considered that the original paragraph 2 of article 32, which deals with a distinct type of criminal conduct, should form a separate article. The Ad Hoc Committee did not review this revised text after its distribution.

¹²⁴ 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.

act or refrain from acting in breach of his or her duties [, which results in harm to that entity].¹²⁵

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.

[Subparagraph (b) (iii) was deleted.]

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

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences all those offences established by it in accordance with this Convention which are punishable by a minimum of four years' imprisonment. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with corruption;¹²⁶
- (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

¹²⁵ At the fifth session of the Ad Hoc Committee, Azerbaijan, Egypt, India, Iran (Islamic Republic of), Nigeria, Pakistan, the Syrian Arab Republic, Thailand, Turkey, Uganda, Ukraine and the United Arab Emirates submitted a proposal to insert a new article 32 bis after this article (see A/AC.261/L.201).

¹²⁶ The text of this paragraph is a revised version submitted, pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention, by Croatia, Germany and the United States, which coordinated an informal working group (A/AC.261/L.189). The Ad Hoc Committee did not review this proposal after its distribution.

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.

[Subparagraph (f) was deleted.]

Article 34¹²⁷
Accounting offences

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences,¹²⁸ 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 37¹²⁹
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.

¹²⁷ The Ad Hoc Committee will revert to this article in the light of its decision on article 12.

¹²⁸ Several delegations proposed the wording “to establish as offences liable to criminal or other sanctions”.

¹²⁹ Germany wished to place on record its objection to the retention of this article.

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.

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*¹³⁰

Participation and attempt

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 in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with articles [...] of this Convention.

2. Each State Party may 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 [...] of this Convention.

3. Each State Party may 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 [...] of this Convention.

Article 38 ter

Knowledge, intent or purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

*[Article 39]*¹³¹

Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, 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 legal system of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Staff of such entities should have adequate training and financial resources to carry out their tasks.]

¹³⁰ The *travaux préparatoires* will indicate that the formulation of paragraph 1 of this article was intended to capture different degrees of participation, but was not intended to create an obligation for States Parties to include all of those degrees in their domestic legislation.

¹³¹ A decision on the retention or deletion of this article was deferred until the finalization of article 5 bis.

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 take such measures as necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

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 trial¹³² or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence covered by this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences covered by this Convention from:

- (a) Holding public office; and
- (b) Holding office in a parastatal enterprise.¹³³

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

¹³² The *travaux préparatoires* will indicate the understanding that the expression “pending trial” is deemed to include the investigation phase.

¹³³ The consistency group proposed that the Ad Hoc Committee consider replacing the term “parastatal enterprise” with the phrase “an enterprise owned in whole or in part by the State”.

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.

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

Article 40 bis
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 establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

[Article 41 was deleted.]

Article 42
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:

(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.

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 eventual confiscation.

[3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use by the competent authorities of frozen, seized or confiscated property that is the proceeds of crime in accordance with its domestic law.]¹³⁴

[Paragraph 4 was deleted.]

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.

6. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to

¹³⁴ The decision on this paragraph will be taken in conjunction with the finalization of relevant provisions in chapter V.

freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.¹³⁵

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 purposes of confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, 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.

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 the principles of their domestic law and with the nature of judicial and other proceedings.

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
Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established by that State Party in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 43
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 potential retaliation or 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.

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:

¹³⁵ The *travaux préparatoires* will indicate that this provision is intended as a minimum threshold and that States Parties would be free to go beyond it in their domestic legislation.

(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 witnesses and experts to give testimony 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.

Article 43 bis

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 on reasonable grounds to the competent authorities any facts concerning offences covered by this Convention.

Article 44

Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, States Parties shall adopt measures, in accordance with fundamental principles of their domestic law, to address consequences of corruption. In this context, States Parties may 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

Compensation for damage

Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons¹³⁶ who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.¹³⁷

¹³⁶ The *travaux préparatoires* will indicate that the expression “entities or persons” is deemed to include States, as well as legal and natural persons.

¹³⁷ The *travaux préparatoires* will indicate that this provision was not intended to restrict the right of a State Party to determine the circumstances under which it would make its courts available,

Article 46
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.

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, experts 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.]

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 [...] [Bribery of national public officials], [...] [Corruption in the private sector] and [...] [Laundering of proceeds of corruption] of this Convention has been committed; or

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

including the right to determine whether to establish extraterritorial jurisdiction over acts referred to in the provision.

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.

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 conviction¹³⁸ 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 the territory of that State Party;¹³⁹ 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.

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 [...] [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 [...] [Laundering of proceeds of corruption], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

¹³⁸ The *travaux préparatoires* should indicate that the term “conviction” should be understood to refer to a conviction no longer subject to appeal.

¹³⁹ The *travaux préparatoires* should reflect the understanding that the offence might be committed

[Subparagraph (e) was deleted.]

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 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 bis¹⁴⁰

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.¹⁴¹

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.¹⁴²

in whole or in part in the territory of the State Party.

¹⁴⁰ The text of this article is a revised version submitted, at the request of the Vice-Chairman with responsibility for this chapter of the draft convention, by Thailand following consultations with interested delegations (A/AC.261/L.200). The Ad Hoc Committee did not review this revised version at its fifth session after it was distributed.

¹⁴¹ One delegation expressed reservations about the use of the word “corruption”, indicating that this paragraph should be limited to cover acts criminalized under the future convention.

¹⁴² One delegation indicated that this paragraph should be included in the *travaux préparatoires*.

Article 51
Extradition

1. This article shall apply to the offences covered by 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.

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 articles [...] of this Convention that are not punishable under its own domestic law.¹⁴³

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.¹⁴⁴

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.]¹⁴⁵

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 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

¹⁴³ The Ad Hoc Committee may revert to this paragraph at its sixth session in order to decide whether to use the expression “offences covered by this Convention”.

¹⁴⁴ At the fifth session of the Ad Hoc Committee, one delegation wished to see this paragraph retained. Most delegations argued in favour of deleting it. The Vice-Chairman with responsibility for this chapter of the draft convention requested the delegation wishing to retain the paragraph to confer with other interested delegations in order to find an appropriate solution.

¹⁴⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, as well as during the discussion held at the fifth session, 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. Some delegations expressed serious concerns and difficulties with the text in square brackets and proposed its deletion. 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. The Ad Hoc Committee will revert to this matter at its sixth session.

(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 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.

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

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*¹⁴⁶

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to 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.

¹⁴⁶ 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. At its fifth session, the Ad Hoc Committee decided to refer this matter to the consistency group.

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.]¹⁴⁷

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, 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.

¹⁴⁷ The Ad Hoc Committee decided to revert to subparagraphs (j) and (k) of this paragraph after concluding its deliberations on chapter V of the draft convention.

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.

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

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.¹⁴⁸

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:

(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;

¹⁴⁸ At the fifth session of the Ad Hoc Committee, Argentina, Benin, Brazil, Brunei Darussalam, Colombia, India, Indonesia, Iran (Islamic Republic of), Mexico, Pakistan and the Philippines proposed the following alternative wording for this paragraph:

“9. Without prejudice to the fundamental principles of their domestic law, States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party may refuse to render such assistance when the offences that have motivated the request are related only to fiscal matters.”

Some delegations supported this proposal, but many other delegations expressed their preference for retaining the article unchanged. The Ad Hoc Committee decided to revert to this paragraph at its sixth session.

(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 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.¹⁴⁹

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;

(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

¹⁴⁹ The *travaux préparatoires* should reflect the understanding that the requesting State Party would be under an obligation not to use any information received that was protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized to do so by the requested State Party.

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 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.¹⁵⁰

¹⁵⁰ The *travaux préparatoires* should indicate that many of the costs arising in connection with

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 effectiveness of law enforcement action to combat the offences covered by this Convention. 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,¹⁵¹ 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;

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.

¹⁵¹ 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.

(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;¹⁵²

(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 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.¹⁵³

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,

¹⁵² 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.

¹⁵³ The *travaux préparatoires* should indicate that, in considering a proposal made by Chile for a provision on jurisdiction and cooperation with regard to offences committed through the use of computer technology (A/AC.261/L.157 and Corr.1), there was general understanding that article 50, paragraph 1 (a), already covered the exercise of jurisdiction over offences established in accordance with the future convention that were committed using computers if all other elements of the offence were met, even if the effects of the offence occurred outside the territory of a State Party. In this regard, States Parties should also keep in mind the provisions of article 4 of the Convention. The second part of the proposal of Chile suggested that States Parties should note the possible advantage of using electronic communications in exchanges arising under article 53. That proposal noted that States Parties might wish to consider the use of electronic communications, when feasible, to expedite mutual legal assistance. However, the proposal also noted that such use might raise certain risks regarding interception by third parties, which should be avoided.

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.

[Articles 57 and 58 were deleted.]

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.

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 funds¹⁵⁴

Article 64 Specific provisions

1. In accordance with the provisions of this Convention, States Parties shall afford one another the widest measure of cooperation and assistance in preventing and combating transfers of assets of illicit origin derived from acts of corruption and in facilitating the recovery of those assets to the legitimate owners.¹⁵⁵

[Subparagraphs (a), (c) and (d) were deleted and subparagraph (b) was moved to article 68.]¹⁵⁶

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] right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.¹⁵⁷

Article 65¹⁵⁸ 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, to require financial institutions within its jurisdiction:

¹⁵⁴ At its fifth session, the Ad Hoc Committee held informal consultations on chapter V with a view to facilitating its further deliberations and action on the provisions contained therein. The Chairman of the informal consultations responsible for chapter V of the draft convention decided to consider the articles of that chapter in the following order: 64, 65, 67, 67 bis, 60, 68, 70, 61, 71, 62 and 66. The revised text of these articles, as it emerged from the informal consultations (A/AC.261/L.196/Add.1, annex), is reproduced below in order to facilitate the Ad Hoc Committee in its consideration of those provisions at its sixth session. It should be noted that the articles appear here in the new order, but without renumbering.

¹⁵⁵ During the informal consultations, a revised text for paragraph 1 of this article was prepared by the delegation of Peru in consultation with other delegations. The United States also prepared revised versions of paragraphs 5 and 6.

¹⁵⁶ During the informal consultations, it was recommended that the content of subparagraphs (c) and (d) be revised and moved to article 74. The new provision should read as follows:

“States Parties should consider affording one another 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 of illicit origin derived from actions of corruption.”

¹⁵⁷ This paragraph was not considered during the informal consultations.

¹⁵⁸ During the informal consultations, a revised text was prepared for paragraphs 1 and 2 of this article by the delegation of the United States, in consultation with other interested delegations, at the request of the Chairman. A revised text for paragraphs 3 and 4 was prepared by the delegation of Peru, also at the request of the Chairman, based on former paragraphs 2-5. In consequence, paragraph 1 was amended and former paragraphs 2-5 were deleted.

(a) To verify the identity of customers with high-value accounts and take reasonable steps to determine the identity of the beneficial owners, as well as the source, of funds deposited into high-value accounts; and

(b) To conduct enhanced scrutiny of high-value accounts sought or maintained by or on behalf of individuals who are or have been entrusted with prominent public functions and persons or companies clearly related to them. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of measures provided in paragraph 1 of this article, each State Party, in accordance with its domestic law and using as a guideline relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of individuals, persons or companies to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention, and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular individuals, persons or companies to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those that the financial institutions may otherwise identify.¹⁵⁹

3. In the context of subparagraph 2 (a) of this article, States Parties shall implement measures to ensure that their financial institutions maintain records, over an appropriate period of time, of transactions carried out, which 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, where appropriate, the identity of the true beneficiary of the transfer in question.

4. With the aim of preventing and detecting transfers of illicitly acquired assets derived from offences established by this Convention, States Parties shall implement appropriate and effective measures to ensure that their financial institutions do not grant improper preferential or advantageous conditions to politicians or public officials; and, with the help of their regulatory and oversight bodies, to prevent the establishment of banks or other financial institutions without any physical presence.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. States Parties shall also consider taking such measures as may be necessary to permit their competent

¹⁵⁹ The text of this subparagraph is based on former paragraph 2 of article 68. During the informal consultations, it was recommended that the text be streamlined and moved to this article.

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

6. Each State Party shall consider adopting such measures as may be necessary, in accordance with its domestic law, to require appropriate 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.

*Article 67*¹⁶⁰

Direct recovery of assets

Each State Party shall, in accordance with principles of its domestic law:

(a) Adopt such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through conduct criminalized in accordance with this Convention;

(b) Adopt such measures as may be necessary to permit its courts to order those who have committed offences under this Convention to pay compensation, damages or penalties to another State Party that has been harmed by such offences;¹⁶¹

(c) Adopt such measures as may be necessary to permit its courts in proceedings to confiscate property acquired through conduct criminalized in accordance with this Convention to recognize another State Party's claim as a legitimate owner of such property prior to ordering confiscation; and

[(d) Adopt such other measures as it may deem necessary to facilitate the recovery of property acquired through conduct criminalized in accordance with this Convention.]¹⁶²

*Article 67 bis*¹⁶³

Mechanisms for recovery of assets through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article [...] [International cooperation for purposes of confiscation] of this Convention with respect to property acquired through or involved in conduct criminalized in accordance with this Convention, shall, in accordance with principles of its domestic law:

(a) 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

¹⁶⁰ During the informal consultations, a revised text of article 67 was prepared by the United States, in consultation with other delegations, pursuant to a request by the Chairman.

¹⁶¹ During the informal consultations, one delegation expressed concern about the content of this subparagraph.

¹⁶² Several delegations expressed a preference for the deletion of this subparagraph. Several other delegations were of the view that it should be retained.

¹⁶³ During the informal consultations, a revised text of article 67 bis was prepared by the delegation of the United States, in consultation with other delegations, pursuant to a request by the Chairman.

confiscation of such property or the payment of a sum of money corresponding to such assets;

(b) Adopt such measures as may be necessary to permit its competent authorities to order the confiscation of such property of foreign origin or the payment of a sum of money corresponding to such assets, including property involved in money-laundering offences; and

(c) Consider adopting such measures as may be necessary to allow confiscation of such property 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.

2. Each State Party, to enable it, at the request of another State Party, promptly to seize, freeze or otherwise preserve property for which there is a reasonable basis to believe that it will be subject to confiscation pursuant to paragraph 1 of this article, shall, in accordance with principles of its domestic law:

(a) Adopt such measures as may be necessary to permit its competent authorities to give effect to a freezing or seizure order issued by a court of competent jurisdiction or competent authority of another State Party;

(b) Adopt such measures as may be necessary to permit its competent authorities to freeze, seize or otherwise prevent the transfer or dissipation of assets upon receipt of a request setting forth a reasonable basis to believe that the property would be named in a confiscation judgement in the requesting State; and

(c) Consider adopting additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such assets.

Article 60

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 instrumentalities referred to in article [...] [Freezing, seizure and confiscation], 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 [...]] [Mechanisms for recovery of assets through international cooperation in confiscation], paragraph (b), and] [...] [Freezing, seizure and confiscation], paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Freezing, seizure and confiscation], 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.]¹⁶⁴

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 [...] [Freezing, seizure and confiscation], 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.^{165, 166}

3. The provisions of article [...] [Mutual legal assistance] 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 estimated value of the property¹⁶⁷ 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];¹⁶⁸

(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 bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(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 and, where appropriate, a legally admissible copy of an order on which the request is based.¹⁶⁹

¹⁶⁴ During the informal consultations, the delegation of Algeria proposed to amend subparagraph (c) to read “Take any other measures as may be permissible under its domestic law to effect the return of such assets” and to move it to another location.

¹⁶⁵ During the informal consultations, the delegation of Algeria amended its earlier proposal to read as follows: “The requested State Party shall inform the requesting State Party of the due diligence undertaken in handling the request throughout the duration of the procedure.”

¹⁶⁶ During the informal consultations, the delegation of the United States proposed to replace paragraph 2 of this article with the following text (now subpara. 2 of art. 67 bis): “Following a request by another State Party having jurisdiction over an offence covered by this Convention, each State Party shall submit a request for provisional measures to its competent authorities, consistent with subparagraph (b) of article 67 bis.”

¹⁶⁷ Taken from article 69.

¹⁶⁸ Taken from article 69. During the informal consultations, some delegations suggested the deletion of the text in square brackets, while others urged its retention, as being useful for practitioners.

¹⁶⁹ During the informal consultations, a revised text for this subparagraph was prepared by the United States to conform to the corresponding provision in its revision of article 67 bis, prepared at the request of the Chairman.

[Subparagraph (d) was deleted.]¹⁷⁰

[Paragraph 4 has been moved.]¹⁷¹

4. 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.

5. Each State Party shall furnish copies of its laws and regulations that give effect to [this article] [this chapter]¹⁷² and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in [paragraphs 1 and 2 of this article] [this chapter]¹⁷³ conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. In addition to the provisions of article [...] [Mutual legal assistance], [paragraphs 9 and 21], cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient or timely evidence or if the property is of a *de minimis* value.¹⁷⁴

8. 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.

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

10. 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].

Article 68

[Special cooperation provisions]

1. States Parties shall cooperate with one another for the purpose of expediting the process of execution of judicial decisions, as appropriate,

¹⁷⁰ During the informal consultations, subparagraph (d) was withdrawn by the delegation of the United States.

¹⁷¹ During the informal consultations, it was agreed that paragraph 4 should be retained and moved to the preamble or to article 61 or 64. The text of the paragraph is as follows: "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." The text was originally taken from article 70.

¹⁷² Taken from article 72.

¹⁷³ Taken from article 72.

¹⁷⁴ During the informal consultations, a revised text of this paragraph (previously para. 9) was prepared by the United States in consultation with Austria and France, at the request of the Chairman.

establishing criminal and civil liability in cases of offences covered by this Convention, in accordance with their domestic law.

[Paragraph 2 was reformulated and moved to article 65, paragraph 2 (b).]

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, 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.¹⁷⁵

4. States Parties shall cooperate with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection [and freezing] of transfers and transactions involving assets, including funds, of illicit origin derived from acts of corruption.¹⁷⁶

[Article 70 was deleted.]

Article 61¹⁷⁷

[Disposition] [Return] of assets

1. [Illicitly acquired assets] [Proceeds of crime] or property confiscated by a State Party pursuant to article [...] [Freezing, seizure and confiscation] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of¹⁷⁸ by that State Party in accordance with the provisions of this Convention, its domestic law [and administrative procedures].

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities [, when acting on the request made by another State Party,] to return proceeds of crime or property confiscated in accordance with the provisions of paragraphs 3 to 5 of this article and with article [...] [International

¹⁷⁵ During the informal consultations, several delegations indicated that they could not accept the mandatory form of paragraph 3, noting that a non-mandatory form appeared in paragraph 4 of article 53. Several other delegations indicated that they would prefer a mandatory form. A number of delegations supported a compromise which would involve inserting the words “domestic law or” after the words “prejudice to its”.

¹⁷⁶ The text of this paragraph is based on former subparagraph 1 (b) of article 64. During the informal consultations, it was recommended to move it to this location.

¹⁷⁷ Initially, a proposal submitted by Switzerland (A/AC.261/15 and Corr.1) was presented to delegations as the result of the work of an informal working group on article 61. Some delegations, however, expressed strong objections, on both procedural and substantive grounds, to using that text as the basis for the informal consultations. The Vice-Chairman responsible for this chapter of the draft convention thus proposed to use the Swiss text as a document of reference for the preliminary consideration of the article as a whole, a suggestion with which delegations agreed. During the informal consultations, it was not possible to complete consideration of the entire article. Paragraphs 2, 4 and 5 were not reviewed, although objections of principle raised by some delegations at the beginning of the discussions would likewise be relevant to future deliberations on these paragraphs.

¹⁷⁸ A number of delegations indicated the need for a better formulation and proposed replacing this wording with “returned to the State of origin”.

cooperation for purposes of confiscation] of this Convention, taking into account the rights of bona fide third parties.

3. In accordance with article [...] [International cooperation for purposes of confiscation] and paragraphs 1 and 2 of this article, the requested State Party shall:¹⁷⁹

(a) [To the extent permitted by its domestic law and if so requested,]¹⁸⁰ give priority consideration to returning confiscated proceeds of crime or property to the requesting State Party, so that it can make restitution¹⁸¹ to the victims of the crime or return such proceeds of crime or property to their legitimate owners;¹⁸²

(b) [Subject to the exceptions provided for in article [...] [Mutual legal assistance], paragraph [21],] in the case of embezzlement of public funds or of laundering of embezzled public funds, as referred to in articles [...] [Embezzlement, misappropriation or other diversion of property by a public official] and [...] [Laundering of proceeds of corruption] of this Convention, when confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention and on the basis of a final judicial decision in the requesting State Party, return to the requesting State Party confiscated property, as defined in article [...] [Freezing, seizure and confiscation] of this Convention, in a manner to be determined by technical arrangements, on a case-by-case basis, between the States Parties concerned. In such cases, the entire amount of the confiscated property shall be returned, subject to paragraph 5 of this article.^{183, 184}

4. When appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, inter alia, on:

(a) Contributing the value of such proceeds or property or funds deriving from their sale or a part thereof to the account designated pursuant to article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention or to [intergovernmental organizations specializing in the fight against corruption] [anti-corruption initiatives and programmes];

(b) Allocating or contributing the value of such proceeds or property or funds deriving from their sale or a part thereof to the financing of specific

¹⁷⁹ Several delegations underlined that no distinction should be made between “proceeds of crime” and “embezzled public funds”. Those delegations therefore called for the deletion of subparagraph (b). Some delegations proposed to include at the beginning of the chapeau the words “when acting on the request of another State Party”.

¹⁸⁰ A number of delegations preferred the removal of the conditionalities implied by the wordings “and if so requested” and “give priority consideration to”, so as to make it clear that the subparagraph concerned the return of assets to the requesting State/State of origin.

¹⁸¹ During the informal consultations, some delegations indicated that it would be more appropriate to use the words “so that it can restore such proceeds or property to the victims”.

¹⁸² A number of delegations called for the deletion of this paragraph since they held the view that disposition should be within the purview of the requesting State Party/State of origin.

¹⁸³ A number of delegations called for the deletion of the words “in a manner to be determined by technical arrangements, on a case-by-case basis, between the States Parties concerned” and of the last sentence of this paragraph, which they considered onerous conditionalities that would not be in line with the spirit of the future convention.

¹⁸⁴ At the fifth session of the Ad Hoc Committee, the Russian Federation proposed an amended version of paragraph 3 (A/AC.261/L.202).

development projects or programmes to the exclusive benefit of the population of the requesting State Party. Such agreements or arrangements may involve specialized intergovernmental organizations;¹⁸⁵

(c) Contributing the value of such proceeds or property or funds deriving from their sale or a part thereof to the reduction of the multilateral debt of the requesting State Party. Such agreements or arrangements shall be concluded in cooperation with intergovernmental organizations specializing in international debt issues.

5. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in the investigations, prosecutions or judicial proceedings leading to the recovery of illicitly acquired assets prior to returning such recovered assets pursuant to this chapter.¹⁸⁶

*[Article 71 was deleted.]*¹⁸⁷

Article 62

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

1. Notwithstanding the provisions of articles [...] [Freezing, seizure and confiscation], [...] [International cooperation for purposes of confiscation] and [...] [Disposition] [Return] of assets 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.¹⁸⁸

[Article 63 was deleted.]

[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

¹⁸⁵ Such contributions shall not be accountable under official development aid.

¹⁸⁶ At the fifth session of the Ad Hoc Committee, the Libyan Arab Jamahiriya proposed to add a new paragraph to article 61 (A/AC.261/L.203).

¹⁸⁷ During the informal consultations, the proposed article 71 was withdrawn by the United States.

¹⁸⁸ Article 62 was not considered during the informal consultations, on the understanding that its content might eventually be reflected in article 61.

to use that information within its territory, in accordance with its national legislation.^{189, 190}

[Articles 69 and 72 were deleted.]

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

Article 73

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 statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

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

*[Paragraph 4 was deleted.]*¹⁹¹

Article 74

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 could include:

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

¹⁸⁹ 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.

¹⁹⁰ This article was not considered during the informal consultations.

¹⁹¹ 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, as well as participation of scientific and academic communities, 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.”

At its fifth session, the Ad Hoc Committee decided to consider this proposal, as revised (that is, including the reference to the scientific and professional communities), during its consideration

(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;

(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;

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

(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;

(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;

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

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

2. States Parties shall, according to their capacity, consider affording 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, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

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.

4. States Parties shall consider assisting one another, upon request, 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 society, 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.

of chapter II of the draft convention.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, 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, programmes and projects in developing countries with a view to implementing this Convention.

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.¹⁹²

VII. Mechanisms for monitoring implementation¹⁹³

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 States Parties in order to achieve the aims set forth in this Convention and to promote and review the implementation of it.

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, regular meetings of the Conference of the Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in [...],¹⁹⁴ including rules concerning the payment of expenses incurred in carrying out these activities.

4. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles [...] [Training and technical assistance] and [...] [Other measures: implementation of the Convention through economic development and technical assistance] and chapters [...] [Preventive measures], [...] [Promoting and strengthening international cooperation] and [...] [Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds] of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

¹⁹² 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). At its fifth session, the Ad Hoc Committee deferred discussion of the proposal introduced by Germany.

¹⁹³ The text of the articles in this chapter is a revised version produced by an informal open-ended working group, established by the Vice-Chairman with responsibility for this chapter of the draft convention at the fifth session of the Ad Hoc Committee and coordinated by Egypt (A/AC.261/L.204). The open-ended informal working group will continue its work during the sixth session of the Ad Hoc Committee.

¹⁹⁴ The text to be inserted here will depend on the outcome of the discussions on articles 76 and 76 bis.

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

5. Entities of the United Nations system, including the 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 this Convention and has informed the Secretary-General of the United Nations 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 objects. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.¹⁹⁵

[6. For the purposes of paragraphs 4 (d) and (e) of this article, the Conference of the Parties shall [, at its first meeting,] establish one [or two] subsidiary body [bodies].]¹⁹⁶

*[Article 76 bis
Reporting and evaluation*

1. The members of the subsidiary body shall be nominated by the States Parties and appointed by the Conference of the Parties to the Convention. The subsidiary body shall consist of ten members, who shall serve in their personal capacity, have expertise relating to the subject matter of this Convention and serve objectively and in the best interests of the Convention. The composition of the subsidiary body shall reflect equitable geographical distribution, as well as the principal legal systems.

2. The Conference of the Parties shall acquire, through the subsidiary body, 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 States Parties or by other entities, including public international organizations and civil society.¹⁹⁷

3. The Conference of the Parties shall, through the subsidiary body, make appropriate use of relevant information produced by other international and regional mechanisms for combating corruption in order to avoid unnecessary duplication of work.

¹⁹⁵ Former paragraph 10 of article 76 bis.

¹⁹⁶ Former paragraph 5 of article 76. Consideration of this paragraph was suspended pending discussion on article 76 bis and on elements at present contained in article 76 bis that could be transferred to this article.

¹⁹⁷ The informal working group decided that this paragraph should be moved to article 76, subject to its reformulation, discussion on which began in the informal working group during the fifth session of the Ad Hoc Committee and is expected to be completed when the informal working group resumes its work during the sixth session. During its discussions at the fifth session, the informal working group was of the view that the phrase “through the subsidiary body” might be deleted. Discussion also began on the concept implied in the final phrase of the paragraph.

4. Each State Party shall provide the Conference of the Parties, through the subsidiary body, with reports containing information on its programmes, plans, practices, results and difficulties encountered, as well as information on legislative and administrative measures adopted to implement the Convention, as required by the Conference of the Parties. The first report shall be submitted within two years of the entry into force of the Convention for the State Party concerned. Subsequent reports shall be submitted every five years.¹⁹⁸

5. States Parties that have submitted a comprehensive initial report to the subsidiary body need not, in subsequent reports, repeat basic information provided previously.¹⁹⁹

6. States Parties that have submitted to a regional or subregional organization a report containing the information referred to in paragraph 4 of this article may use elements of that report for the report that they undertake to submit to the Conference of the Parties through its subsidiary body.

7. For the purpose of evaluation, the Conference of the Parties shall consider establishing, through the subsidiary body, a peer review system. The Conference of the Parties shall also consider establishing a regional structure for the peer review system, with due regard for the need to ensure a uniform level of evaluation for all States Parties.²⁰⁰

8. For the purposes of improving the implementation of this Convention and of facilitating targeted technical assistance, the subsidiary body shall, on the basis of the information gathered in accordance with paragraphs 2 to 7 of this article, prepare reports evaluating the legal implementation of the Convention and the enforcement of its provisions by each State Party. Those reports shall be submitted to the Conference of the Parties.²⁰¹

9. The report submitted by States Parties to the subsidiary body of the Conference of the Parties and the evaluation reports prepared by the subsidiary body shall be made widely available to the public.]

¹⁹⁸ The informal working group decided that this paragraph should be moved to article 76, after appropriate amendments to bring its contents in line with that article. The informal working group would make those amendments when it resumed its work during the sixth session of the Ad Hoc Committee.

¹⁹⁹ The informal working group decided that this paragraph should be moved to article 76, after appropriate amendments to bring its contents in line with that article. The informal working group would make those amendments when it resumed its work during the sixth session of the Ad Hoc Committee.

²⁰⁰ Norway expressed the wish to have this paragraph moved to article 76. The informal working group did not have time to discuss that proposal.

²⁰¹ Norway expressed the wish to have this paragraph moved to article 76. The informal working group did not have time to discuss that proposal.

Article 77
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 its subsidiary body [bodies]].
2. The secretariat of the Conference of the Parties 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 meetings of the Conference of the Parties;
 - (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article [...] [Reporting and evaluation], paragraph 4, of this Convention;
 - (c) Ensure the necessary coordination with the secretariats of relevant public international and regional organizations;
 - [(d) Assist the subsidiary body in carrying out the activities set forth in article [...] [Reporting and evaluation] of this Convention and make arrangements and provide the necessary services for the meetings of the subsidiary body [bodies];]
 - (e) Perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties, in particular with regard to the collection of publicly accessible documentation relating to national and international anti-corruption measures.

VIII. Final clauses²⁰²

Article 78²⁰³
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.

²⁰² 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.

²⁰³ 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.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.²⁰⁴

[Article 79²⁰⁵

Relationship to other agreements and arrangements

Option 1²⁰⁶

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 2²⁰⁷

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.

²⁰⁴ 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).

²⁰⁵ 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.

²⁰⁶ 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.

²⁰⁷ 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).

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.]

[Article 79 bis²⁰⁸

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 80²⁰⁹

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.

²⁰⁸ 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.

²⁰⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there were no comments on this article.

*Article 81*²¹⁰*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 [...].

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.²¹¹

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.²¹²

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]²¹³ [fortieth]²¹⁴ 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.

²¹⁰ 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.

²¹¹ Text taken from a proposal made by Colombia.

²¹² The last two sentences of this paragraph were proposed by Colombia.

²¹³ 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.

²¹⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations supported this proposal.

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.²¹⁵

Article 83²¹⁶
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 84²¹⁷
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become

²¹⁵ 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.

²¹⁶ 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.

²¹⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.

effective one year after the date of receipt of the notification by the Secretary-General.²¹⁸

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

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

Article 85²¹⁹

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.

²¹⁸ 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."

²¹⁹ 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.