

United Nations Office on Drugs and Crime

TRAVAUX PRÉPARATOIRES

of the negotiations for the elaboration of the
United Nations Convention
against Corruption



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* The numbering of articles in part two refers to the draft texts of the Convention and not to the final text.

Foreword

The present publication contains the *travaux préparatoires* (official records) of the negotiations for the elaboration of the United Nations Convention against Corruption, adopted by the General Assembly in its resolution 58/4 of 31 October 2003.

The purpose of the publication is to track the progress of the negotiations in the open-ended intergovernmental Ad Hoc Committee for the Negotiation of a Convention against Corruption, which was established by the General Assembly in its resolution 55/61 of 4 December 2000, with terms of reference that were taken note of by the Assembly in its resolution 56/260 of 31 January 2002. It is intended to provide a comprehensive picture of the background to the Convention and, by presenting the evolution of the text, to give the reader an understanding of the issues confronted by the Ad Hoc Committee and the solutions it found. Thus, this publication is intended to provide a better, in-depth understanding of the Convention.

The Ad Hoc Committee began its work on 21 January 2002 and held seven sessions. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee finalized and approved the draft convention and decided to submit it to the General Assembly for consideration and action at its fifty-eighth session, in accordance with resolution 56/260. At its seventh session, the Ad Hoc Committee also approved a draft resolution entitled “United Nations Convention against Corruption” for consideration and action by the Assembly at its fifty-eighth session. Finally, the Ad Hoc Committee submitted to the Assembly its report on the work of its first to seventh sessions, in accordance with Assembly resolutions 56/260 and 57/169 of 18 December 2002, in order to apprise it of the work done in implementing its mandate and to submit its recommendations to the Assembly for consideration and action.

The introduction to the present publication provides a historical account of the United Nations work and initiatives to strengthen international cooperation against corruption and to develop effective anti-corruption strategies and policies. It includes a summary of the activities carried out prior to the establishment of the Ad Hoc Committee, which laid the foundations for the work of that body.

The material contained in the main body of the publication is divided into three parts. Part one presents the evolution of the text of the draft convention against corruption that was submitted by the Ad Hoc Committee in its final form to the General Assembly for consideration and action. It also contains the successive revisions of the text of the draft convention for each article separately, as reflected in the in-session documents of the Ad Hoc Committee, with appropriate adjustments of the accompanying footnotes, where necessary. Proposals and contributions by Governments are also reflected, to the extent that they became part of the negotiation process and contributed to the finalization of the text. Additional notes by the Secretariat have been inserted where this was considered necessary to provide clarification and ensure continuity and consistency of the material presented. Notes relating to entire chapters and not to individual articles have been included under the titles of the chapters of the Convention.

The basic structure of the presentation of each article is uniform. Each chapter on a specific provision is divided into sections, of which the first is devoted to the negotiation texts showing the evolution of the article until its finalization. The second section presents the approved text of the provision as adopted by the General Assembly and, where interpretative notes on the content of the provision were approved by the Ad Hoc Committee, a third section is added containing those notes.

It should be noted that specific provisions that were also discussed during the negotiation process but were eventually deleted are presented either separately under part two of the *travaux préparatoires* on “Deleted articles” or in connection with finally approved articles of the Convention when they were interrelated.

Part three of the publication contains a similar outline of the negotiations that led to the finalization of the text of the resolution by which the General Assembly adopted the Convention, resolution 58/4.

The resources available to the Ad Hoc Committee were limited. Thus, it did not benefit from the availability of summary records, unlike similar bodies such as the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which had summary records of its plenary meetings and the meetings of its relevant committees. In order to compensate for this, the Secretariat tried to reflect the deliberations and positions of Member States in the documentation of each session of the Ad Hoc Committee through the use of extensive and detailed footnotes to the texts under negotiation.

The CD-ROM that accompanies this publication contains an electronic version of the contents of the work in all the official languages of the United Nations.

The following officers of the United Nations Office on Drugs and Crime were responsible for drafting the *travaux préparatoires* of the United Nations Convention against Corruption: Dimitri Vlassis, Chief, Corruption and Economic Crime Branch and Secretary, Ad Hoc Committee for the Negotiation of a Convention against Corruption; and Demostenes Chryssikos, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch. Special thanks are due to Anaïs Desbrest, contractor, for her substantive contribution to the accomplishment of this project.

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I. United Nations initiatives to respond to the threat of corruption: the early years

The United Nations has been concerned with the problem of corruption for more than 30 years. The first discussions groping for a global response to the problem were linked to the efforts launched by the United Nations in the mid-1970s to address the issue of corrupt practices and illicit payments in international business transactions and to formulate a code of conduct for transnational corporations. In parallel with those efforts, corruption gradually acquired a prominent place in the United Nations crime prevention and criminal justice agenda and, thus, has increasingly been discussed by the quinquennial congresses, in particular with reference to new forms of criminal activity and crime prevention planning in the context of development.

Early United Nations initiatives in the field of crime prevention and criminal justice: the role of the United Nations congresses on the prevention of crime and the treatment of offenders

The problem of corruption from a crime prevention and criminal justice perspective was placed from the outset on the agenda of the United Nations congresses on the prevention of crime and the treatment of offenders. This forum was deemed the most appropriate international environment for assessing the problem of corruption and discussing best ways to increase awareness, build effective national policies and promote concerted international action against it. That was because of the nature and status of the congresses as the only major United Nations conferences that brought together participants and experts from a whole spectrum of criminal justice fields to exchange views, share relevant expertise and experience, and formulate international guidelines.

1. *Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Kyoto, Japan, 17-26 August 1970)*

Under its agenda item 1, entitled “Social defence policies in relation to development planning”, the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Kyoto, Japan, from 17 to 26 August 1970, devoted attention and considerable discussion to new and emerging forms of crime and in particular the increase in so-called “white-collar crime”. In that context, the existence of graft and corruption was seen as a threat to progress and socio-economic development. The Congress unanimously adopted a declaration, which drew attention to the increasing seriousness and proportions of the problem of crime in many countries covering the range of conventional crime as well as the more subtle and sophisticated types of organized crime and corruption.¹

2. *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1-12 September 1975)*

Under its agenda item 5, “Changes in forms and dimensions of criminality — transnational and national”, the Fifth Congress focused on crime as business at the national and transnational levels, paying particular attention, inter alia, to white-collar

¹ See *Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Kyoto, Japan, 17-26 August 1970: report prepared by the Secretariat* (United Nations publication, Sales No. E.71.IV.8), p. iii.

crime and corruption. It was agreed that the economic and social consequences of “crime as business” were typically much greater than the consequences of traditional forms of interpersonal violence and crimes against property, thus posing a more serious threat to society and national economies. In addition, while white-collar crime and corruption were a serious problem in many developed countries, the national welfare and economic development of the entire society in developing countries might be drastically affected by such criminal conduct as bribery and price-fixing.²

Recognizing that those types of crime had been relatively neglected by criminologists and that the definitions used were often vague and ambiguous, the Congress indicated that the expression “crime as business” referred to heterogeneous groups of crimes characterized by specific features, such as the underlying objective of economic gain and the involvement of some form of commerce, industry or trade; the use or misuse of legitimate techniques of business and industry; and the high social status and/or political power of the persons involved in the commission of the crimes concerned. Crimes of corporations, on the one hand, and so-called “organized” or syndicated crime, on the other, were found to have many similarities and interrelations and, typically, both might involve the corruption of law enforcement and political authority.³

In its recommendation, the Congress called, inter alia, for more information about economic criminality and for special studies on issues related to corruption, in view of the extremely detrimental effect of corrupt practices on national economies and international trade, in particular in developing countries. It also called for the elaboration of legislation against national and transnational abuses of economic power in the exercise of commercial activity by national and transnational enterprises; greater participation of shareholders in the affairs of major corporations or of workers in public enterprises; and the establishment of national securities and exchange commissions or other administrative bodies and possibly the establishment of a similar body at the international level.⁴

3. Code of Conduct for Law Enforcement Officials

In paragraph 3 of its resolution 3218 (XXIX), the General Assembly requested the Fifth Congress, under item 3 of its agenda, taking into account the input of the Committee on Crime Prevention and Control in pursuance of Economic and Social Council resolution 1794 (LIV), to give urgent attention to the question of the development of an international code of ethics for police and related law enforcement agencies. The Congress considered the draft international code of police ethics that had been drawn up by a working group of police experts⁵ in preparation for the Congress

² See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. E.76.IV.2 and corrigendum), chap. II, para. 51.

³ *Ibid.*, para. 52. With regard to corruption, the preparatory work for the Congress had already been useful in highlighting the existence of at least two broad categories, differing according to motive or objective: firstly, political corruption related primarily to the acquisition or retention of political power, such as vote-buying, unlawful campaign contributions or other illegal acts directed towards the election or re-election of a particular candidate or the illegal patronage of civil service appointments; and secondly, acts of corruption related directly to financial gain, not only for the politician or administrator who was corrupted, but also for the person involved in active corruption. Such acts included bribery of the police or other government officials to induce them to turn a blind eye on illegal activities, and giving “kickbacks” to politicians in return for public works contracts. See the working paper prepared by the Secretariat entitled “Changes in forms and dimensions of criminality — transnational and national” (A/CONF.56/3), para. 16.

⁴ See *Fifth United Nations Congress...*, chap. I, para. 8.

⁵ Convened in Warrenton, Virginia, United States of America, from 7 to 10 January 1975.

and submitted to it as annex III of one of its working papers,⁶ as well as other models for law enforcement codes of ethics. The Congress decided to request the General Assembly to establish a committee of experts to study the question and to consider the feasibility of regional groups drafting preliminary documents for the use of the committee.

The General Assembly, at its thirtieth session, considered the report of the Fifth Congress on the issue of an international code of conduct for law enforcement officials and in its resolution 3453 (XXX) requested the Committee on Crime Prevention and Control to elaborate, on the basis of, inter alia, the proposals presented to and conclusions arrived at by the Fifth Congress, a draft code of conduct for law enforcement officials and to submit that draft code to the Assembly at its thirty-second session, through the Commission for Social Development and the Economic and Social Council. The final text of the Code of Conduct for Law Enforcement Officials was submitted to the Assembly at its thirty-fourth session and adopted by the Assembly in its resolution 34/169.⁷

It should be noted that the Code is the first United Nations instrument making reference to a definition of corruption. In particular, subparagraph (b) of the commentary on article 7 clarifies that:

“While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.”

4. *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Caracas, 25 August-5 September 1980)*

The Sixth Congress considered corruption issues under its agenda item 5, “Crime and the abuse of power: offences and offenders beyond the reach of the law”. In that context, consideration was given, inter alia, to crimes that law enforcement agencies were relatively powerless to address because of the high economic or political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported and prosecuted. Such offences included bribery and corruption, embezzlement and misappropriation of public funds, as well as overpricing, overinvoicing and restrictive business practices.⁸

By the time the Sixth Congress was held, it had become evident that especially developing countries were vulnerable to crimes affecting their national economy, such as bribery and corruption, and susceptible to potential economic exploitation by powerful trading partners appearing to operate outside and above the law.⁹

⁶ See the working paper prepared by the Secretariat entitled “The emerging roles of the police and other law enforcement agencies, with special reference to changing expectations and minimum standards of performance” (A/CONF.56/5).

⁷ The provisions of the Code and commentary on each of them are annexed to that resolution.

⁸ See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. IV, sect. B, para. 159.

⁹ See the working paper prepared by the Secretariat entitled “New perspectives in crime prevention and criminal justice and development: the role of international cooperation” (A/CONF.87/10), para. 59.

The deliberations at the Congress identified corporate crime as a particularly difficult, invidious and costly problem, which impaired human well-being and called for concerted measures at various levels. The problems posed by transnational corporations and their abuse of economic power were given serious consideration, also in view of the inability of many victimized countries, especially developing ones, to deal with them effectively.¹⁰ International cooperation was deemed by many Congress participants a necessary component for combating corporate crime on a global basis, utilizing the experiences of the various Member States in that respect. It was also stressed that an international strategy was needed to combat, deter and prevent corporate crime worldwide, beginning with an immediate compilation, study and analysis of national and international legal frameworks in this area, especially with regard to corporate crime having transnational implications. It was further noted that abuses of public and economic power often involved corruption and therefore the need for combined national and international efforts to combat the phenomenon in all its forms was acute.¹¹

The Congress agreed on the urgent need to gather and exchange information on the various aspects of offences relating to the abuse of power and the perpetrators of such offences at the global and regional levels; reform the respective national laws, where necessary, so as to cover adequately those offences; broaden and improve the machinery for combating illegal abuses of power; conduct research on the aetiology of those offences, the typology of the offenders, patterns, trends and dynamics of such acts, as well as the measures required to contain them; and strengthen international cooperation in policy formulation and the implementation of effective action strategies, particularly as regards economic crime.¹² The development of international agreements on minimum standards for international business transactions in respect of such economic crimes was considered essential, as was the further consideration of this important problem at the Seventh Congress.¹³

5. *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, Italy, 26 August-6 September 1985)*

The Seventh Congress dealt with corruption under its agenda item 3, “New dimensions of criminality and crime prevention in the context of development: challenges for the future”. It had already been acknowledged that the phenomenon had become so rampant as to be perceived by sizeable segments of the population as an unavoidable component of public administration. Such circumstances were seen as likely to undermine the credibility of Governments, thereby sapping public trust in political administration and generating considerable cynicism and opportunism among the citizenry, ultimately resulting in resignation over the inevitability of a corrupt society and an inability to achieve a state of communal well-being and economic stability and prosperity.¹⁴

¹⁰ In this connection, the parallel United Nations process for establishing standards and norms for transnational corporations, as presented above, was taken into account.

¹¹ See *Sixth United Nations Congress...*, chap. IV, sect. B, paras. 164-167.

¹² *Ibid.*, chap. I, sect. C, p. 28.

¹³ *Ibid.* It should also be noted that one of the more pressing tasks suggested by the preparatory meetings of the Congress was the development of guidelines and norms aimed at the prevention and control of transnational abuses of economic power, to provide criteria against which countries could assess their efforts. Some kind of “minimum rules” in this area had been urged. It was suggested, in this connection, that where conventions and other binding agreements were not yet feasible, the adoption of international codes of conduct could formalize and systematize international consensus regarding acceptable practice and give adherence moral weight. See the working paper prepared by the Secretariat entitled “Crime and the abuse of power: offences and offenders beyond the reach of the law” (A/CONF.87/6), para. 88.

¹⁴ See the working paper prepared by the Secretariat entitled “New dimensions of criminality and crime prevention in the context of development: challenges for the future” (A/CONF.121/20 and Corr.1), para. 27.

There was nearly complete agreement among participants on the profoundly negative impact that criminality had upon socio-economic development. It was recognized, in that connection, that, especially in developing countries, national development programmes were being seriously hindered by the proliferation of economic crime, as well as by rampant corruption, bribery and abuses of economic power committed by certain national and transnational corporations.¹⁵

The Congress recommended a series of Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order for national, regional and international action, as appropriate, taking into account the political, economic, social and cultural circumstances and traditions of each country on the basis of the principles of the sovereign equality of States and non-interference in their internal affairs. It further invited Governments to be guided by those principles in the formulation of appropriate legislation and policy directives.

One of the Guiding Principles related to economic crime called for the review and strengthening of laws governing the functioning of business enterprises, as necessary, to ensure the effectiveness of such laws for preventing, investigating and prosecuting economic crime; the adjudication of complex cases of economic crime by judges familiar with accounting and other business procedures; and the provision of adequate training to officials and agencies responsible for the prevention, investigation and prosecution of economic crimes.¹⁶

Another Guiding Principle referred to issues of corporate responsibility, stressing the need to give due consideration to making criminally responsible not only those persons who had acted on behalf of an institution, corporation or enterprise, or who were in a policymaking or executive capacity, but also the institution, corporation or enterprise itself, by devising appropriate measures that would prevent or sanction the furtherance of criminal activities.¹⁷

The Congress further recommended that every effort should be made to achieve equivalent penalization of economic crimes and of conventional crimes of comparable gravity by means of appropriate sentencing policies and practices, so as to eliminate any undue inequality between sanctions for conventional property offences and those for new forms of economic crime. With that aim in view, it was stressed that more appropriate penalties or sanctions for economic crimes should be introduced whenever the existing measures did not correspond to the extent and gravity of those offences.¹⁸

Further guidance was finally provided when determining the nature and severity of penalties for economic crimes and related offences, in that both the harmfulness and potential harmfulness of the offence and the degree of guilt of the offender should be taken into account. It was also acknowledged that economic sanctions, in particular severe economic penalties, should be graded in such a way as to ensure that they were equally exemplary for both poor and wealthy offenders, taking into account the financial resources of those criminally responsible. Moreover, sanctions and legal measures

¹⁵ See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 61.

¹⁶ *Ibid.*, chap. I, sect. B, annex, para. 8.

¹⁷ *Ibid.*, para. 9.

¹⁸ *Ibid.*, para. 10.

should in the first place aim at taking away any financial or economic advantages obtained through such crimes.¹⁹

II. Paving the way for setting international standards against corruption

A. Interregional Seminar on Corruption in Government (The Hague, 11-15 December 1989)

As part of the preparation activities for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Crime Prevention and Criminal Justice Branch, in cooperation with the Department of Technical Cooperation for Development of the Secretariat, organized an Interregional Seminar on Corruption in Government, hosted by the Government of the Netherlands in The Hague from 11 to 15 December 1989. The Seminar was attended by high-level officials from 18 developing countries from all the regions and by observers from 8 developed countries, non-governmental organizations, academic institutions, independent anti-corruption bodies and ombudsman's offices. The first draft of a manual to combat corruption, prepared for submission to the Eighth Congress, was circulated for comments.

The Seminar included in-depth discussions on the forms of corruption in government, and its causes, consequences and relationships with organized crime and an assessment of the existing measures against corruption. Participants recommended appropriate actions to prevent and control the phenomenon at the national, regional and international levels. At the same time, the role of international cooperation in the prevention, detection, investigation, prosecution and sanctioning of corrupt practices and enforcement in the public management system was highlighted. The need for better information and expertise, and facilitating technical cooperation for developing countries, was emphasized. Finally, the possibility of an international convention to deal with transnational corruption and an international code of ethics for public service was also considered.²⁰

B. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August-7 September 1990)

The Eighth Congress examined corruption-related issues under its agenda item 3, "Crime prevention and criminal justice in the context of development: realities and perspectives of international cooperation". In the working paper prepared by the Secretariat for the purposes of the Congress deliberations, it had been stressed that corruption had become more transnational, plaguing all societies, and that its consequences were much more deleterious in developing countries. Strong political will was therefore needed for effective counteraction focusing primarily on the harmonization of national legislations and the promotion of international cooperation,

¹⁹ Ibid., para. 11.

²⁰ See Department of Technical Cooperation for Development and Centre for Social Development and Humanitarian Affairs, *Corruption in Government: Report of an Interregional Seminar, The Hague, Netherlands, 11-15 December 1989* (TCD/SEM.90/2 – INT-89-R56).

which could include provisions for the confiscation of the proceeds of corrupt practices, coupled with measures to prevent their laundering.²¹

The Congress had before it a draft manual on practical measures against corruption (A/CONF.144/8 and Corr.1), prepared in response to Economic and Social Council resolution 1990/23. The Congress participants considered the manual a worthwhile model that would assist Member States in their fight against corruption.²² It was further suggested that, based on national experiences, a code of ethics should be introduced for compliance by individuals and organizations, and that the United Nations should provide leadership in that regard. It was also pointed out that such a code could be used as a model for more specific initiatives that would not only articulate the values of public administration but also include statements of managerial objectives and obligations of the community.²³

In its resolution 7, entitled “Corruption in government”, the Congress recommended that Member States devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power; invited Member States to review the adequacy of their criminal laws, including procedural legislation, in order to respond to all forms of corruption and actions designed to assist or facilitate corrupt activities, and to provide recourse for sanctions that would ensure adequate deterrence; and urged Member States to adopt procedures and devote adequate resources for the detection, investigation and conviction of corrupt officials and to create legal provisions for the forfeiture of funds and property from corrupt practices.

In the same resolution, the Congress requested the Crime Prevention and Criminal Justice Branch to develop a draft international code of conduct for public officials and submit it to the Ninth Congress; to solicit the views of Governments, intergovernmental and non-governmental organizations and professional associations in connection with the measures contained in the manual on practical measures against corruption to be used in developing and further elaborating upon the draft code of conduct for public officials, with a view to enhancing their adoptability; and requested the Committee on Crime Prevention and Control to keep the issue of corruption under constant review and to submit the results of the efforts undertaken in pursuance of the resolution to the Ninth Congress.²⁴

The General Assembly adopted resolution 45/107, entitled “International cooperation for crime prevention and criminal justice in the context of development”, in which it reiterated the recommendations of the Eighth Congress on measures against corruption and the mandate to the Crime Prevention and Criminal Justice Branch on the elaboration of materials and the provision of specialized training to judges and prosecutors.

²¹ See the working paper prepared by the Secretariat entitled “Crime prevention and criminal justice in the context of development: realities and perspectives of international cooperation” (A/CONF.144/5), paras. 19-25.

²² After the Congress, the manual was circulated to experts around the world and the comments received were incorporated to produce a revised version, which was published in 1993 (see *International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4)).

²³ See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. A, para. 72.

²⁴ *Ibid.*, chap. I, sect. C.7.

C. Parallel work of the Commission on Human Rights

Following the Eighth Congress, the Commission on Human Rights adopted resolution 1992/50, entitled “Fraudulent enrichment of top State officials prejudicial to the public interest, the factors responsible for it, and the agents involved in all countries in such fraudulent enrichment”, in which it stressed the necessity for determined action to combat the fraudulent or illicit enrichment of top State officials and the transfer abroad of the assets thus diverted, as well as to prevent those practices which undermined the democratic system in countries throughout the world and constituted an obstacle to their development.

It should be noted that, at a later stage, the Subcommittee on the Protection and Promotion of Human Rights adopted, in August 2003, the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.14/Sub.2/2003/12/Rev.2). Written in consultation with unions, business and non-governmental organizations, the norms address the human rights responsibilities of business within their “spheres of activity and influence”. Such responsibilities include the commitment to avoiding corruption and maintaining transparency.²⁵ The norms are not legally binding on States or corporations, but they were drafted in a normative wording as a result of a formal United Nations consultative process, and, for the most part, draw on existing human rights law and principles, which embody moral and political commitments of Governments and corporations and represent standards of law in development.

D. The establishment of the Commission on Crime Prevention and Criminal Justice

The Eighth Congress also marked the beginning of a new era for the United Nations crime prevention and criminal justice programme, because, on its recommendation, the Secretary-General convened the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held in Paris from 21 to 23 November 1991 (see A/46/703 and Corr.1).

At that Meeting, it was emphasized that one of the major challenges that the international community faced was to match any increases in the capacity and capabilities of perpetrators of crime with similar increases in the capacity and capabilities of criminal justice and law enforcement authorities. It was further stressed that, in order to combat rapid developments with regard to novel serious forms and transnational aspects and dimensions of crime, additional resources needed to be made available to both developing countries and countries in which democracy had begun to emerge. The role of the United Nations as the focal point for coordinating international

²⁵ Norm 11 states:

“Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization.”

According to the commentary on norm 11 (see E/CN.4/Sub.2/2003/38/Rev.2), transnational corporations and other business enterprises shall:

“(a) Enhance the transparency of their activities in regard to payments made to Governments and public officials; openly fight against bribery, extortion and other forms of corruption; and cooperate with State authorities responsible for combating corruption; (b) not receive payment, reimbursement, or other benefit in the form of natural resources without the approval of the recognized Government of the State of origin of such resources; and (c) assure that the information in their financial statements fairly presents in all material respects the financial condition, results of operations and cash flows of the business.”

efforts, establishing priorities and acting as a clearing house to match needs and resources was acknowledged.

The Paris Meeting developed a statement of principles and programme of action of the United Nations crime prevention and criminal justice programme, which the General Assembly approved in December 1991 in its resolution 46/152. The Assembly determined that the revamped programme would focus its activities on specific areas of priority, and direct its energies towards providing timely and practical assistance to States at their request. Among the goals of the programme would be the integration and consolidation of the efforts of Member States in preventing and combating transnational crime and the promotion of the highest standards of fairness, justice and professional conduct. At the institutional level, the Assembly decided that the Committee on Crime Prevention and Control, the governing body of the programme composed of experts nominated by Governments but serving in their individual capacity, would cease to exist. In its place, the Assembly established the Commission on Crime Prevention and Criminal Justice, a functional commission of the Economic and Social Council, composed of the representatives of 40 Governments, thus ensuring direct governmental involvement in both decision-making and oversight of the programme's activities.

On the recommendation of the Commission at its inaugural session (Vienna, 21-30 April 1992), the Economic and Social Council adopted resolution 1992/22, in which it determined that one of the priority themes that should guide the work of the Commission and the United Nations crime prevention and criminal justice programme would relate to economic crime, including money-laundering.

At its second session (Vienna, 13-23 April 1993), the Commission had before it a number of suggestions regarding possible subjects of workshops to be organized at the Ninth Congress on the Prevention of Crime and the Treatment of Offenders (see E/CN.15/1993/7 and Corr.1). Corruption was one of those subjects. On the recommendation of the Commission, the Economic and Social Council decided, in its resolution 1993/32, to devote one day of plenary deliberations at the Ninth Congress to the issue.

In pursuance of resolution 7 of the Eighth Congress, a draft international code of conduct for public officials (A/CONF.169/14, annex I) was prepared and discussed by the five regional preparatory meetings of the Ninth Congress and by the Commission at its third session (Vienna, 26 April-6 May 1994). The Economic and Social Council, in its resolution 1994/19, recommended that the Ninth Congress consider the desirability of a code of conduct for public officials, and that the Secretary-General seek comments from Member States and relevant entities in order to assist the Commission on Crime Prevention and Criminal Justice in its consideration at its fourth session.

E. World Ministerial Conference on Organized Transnational Crime (Naples, Italy, 21-23 November 1994) and relevant follow-up action

1. The Naples Conference

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its second session, the Economic and Social Council adopted resolution 1993/29, in which it requested the Secretary-General to organize a world ministerial conference on organized transnational crime and accepted the offer of the Government of Italy to act as host for the conference.

The World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, from 21 to 23 November 1994 attracted the highest number of participating States, as well as the highest level of representation of any crime prevention and criminal justice conference of the United Nations. It was attended by over 2,000 participants and delegations from 142 States (86 of them at the ministerial level, while others were represented by their Heads of State or Government), in addition to intergovernmental and non-governmental organizations.

In shaping the discussion framework for the Conference, it was acknowledged that corruption was linked to the systemic impact of organized transnational crime on development efforts, in that scarce resources had to be diverted from other projects in response to criminal activities. In addition, corruption had been found to weaken the commitment of the citizenry to the sacrifices demanded by development policies and impair the rational decision-making process required by public administration.²⁶

The Conference unanimously adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A.), in which it emphasized the need for urgent global action against organized transnational crime, focusing on the structural characteristics and modus operandi of criminal organizations; and called upon States to take into consideration a series of characteristic features of organized crime, which included, among others, violence, intimidation and corruption used to earn profits or control territories or markets. In its resolution 49/159, the General Assembly approved the Naples Political Declaration and Global Action Plan and urged States to implement them as a matter of urgency.

2. *Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (Buenos Aires, 27-30 November 1995)*

The Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was organized pursuant to General Assembly resolution 49/159 and Economic and Social Council resolution 1995/11, and was hosted by the Government of Argentina in Buenos Aires from 27 to 30 November 1995. The Workshop was designed to follow up on the World Ministerial Conference on Organized Transnational Crime (see above). Its aim was to examine ways to strengthen and improve the capacity of the countries of Latin America and the Caribbean to respond to organized transnational crime and to improve the mechanisms of regional and multilateral cooperation needed in the fight against organized transnational crime and corruption. Aimed at promoting action at both the national and the regional level to achieve those aims, the Workshop adopted by consensus the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (see E/CN.15/1996/2/Add.1, annex). The Ministers from Latin American and Caribbean States considered of the highest priority strategies and measures intended to promote good governance, transparency and accountability and to prevent, control and suppress corruption, so as to strengthen the capacity of States to confront organized transnational crime, and for that reason, considered that the prevention and control of corruption should be included in the priorities of the United Nations crime prevention and criminal justice programme. They also undertook to promote the elaboration of integrated proposals to develop regional projects for

²⁶ See background document entitled "Problems and dangers posed by organized transnational crime in the various regions of the world" (E/CONF.88/2), para. 121.

international cooperation and transfer of technology to prevent and combat organized transnational crime and corruption in the region.

F. Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 29 April-8 May 1995) and follow-up action

As mentioned above, on the basis of the work and the recommendations of the Commission on Crime Prevention and Criminal Justice during the period 1992-1994, the issue of corruption was included in the programme of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo, from 29 April to 8 May 1995. The Congress devoted a special session to the theme "Experiences in practical measures aimed at combating corruption involving public officials".²⁷

The Congress invited Member States to improve policy development, increase the use of bilateral or multilateral cooperation agreements and conduct more extensive research on corruption and its effects on society; and called on Member States to enact legal provisions, where necessary, including the establishment of enforcement and monitoring mechanisms concerning economic crime, such as corruption, which often constituted a link in a larger chain of offences having a tremendous negative impact on the economic situation of regions.²⁸

In pursuance of General Assembly resolution 49/157, the Commission on Crime Prevention and Criminal Justice considered, at its fourth session (Vienna, 30 May-9 June 1995), the recommendations of the Ninth Congress.

Following the fourth session of the Commission and on its recommendation, the Economic and Social Council adopted resolution 1995/14, in which it urged States to develop and implement anti-corruption strategies, increase their capacity to prevent, detect, investigate and prosecute corrupt practices, and improve international cooperation in the prevention and control of corruption. The Council also requested the Secretary-General to keep the issue of action against corruption under regular review and more specifically to review and expand the manual on practical measures against corruption; to cooperate and coordinate with other United Nations entities and relevant international organizations in undertaking joint activities to prevent and control corruption; and continue his consultations with Governments to revise further the text of the draft international code of conduct for public officials prepared pursuant to resolution 7 of the Eighth Congress and present it to the Commission at its fifth session. Accordingly, the Secretary-General requested the views and comments of Governments on the draft code and the replies received from Member States were submitted to the Commission at its fifth session (Vienna, 21-31 May 1996).²⁹

In its resolution 50/145, the General Assembly took note with appreciation of the report of the Ninth Congress, which contained the results of the Congress, including the recommendations and suggestions made at the special plenary meeting on combating corruption involving public officials; endorsed the resolutions adopted by the Congress,

²⁷ For the relevant discussions at the special session, see the Report of the *Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995* (A/CONF.169/16/Rev.1), chap. V, sect. A, paras. 245-261.

²⁸ See *Ninth United Nations Congress...*, chap. I, resolution 1.

²⁹ See E/CN.15/1996/5, chap. II. A revised draft of the international code of conduct for public officials based on the comments received from Member States was annexed to the same document.

as well as the recommendations made by the Commission on Crime Prevention and Criminal Justice at its fourth session, and by the Economic and Social Council, at its substantive session of 1995, on the implementation of the resolutions and recommendations of the Congress, as contained in Council resolution 1995/27; and invited Governments to be guided by those resolutions and recommendations in formulating legislation and policy directions and to make all efforts to implement the principles contained therein.

III. Adoption of United Nations “soft law” instruments related to corruption

A. Adoption of the International Code of Conduct for Public Officials

Recalling Economic and Social Council resolution 1996/8, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fifth session, the General Assembly adopted the International Code of Conduct for Public Officials in its resolution 51/59 and recommended it to Member States as a tool to guide their efforts against corruption; requested the Secretary-General to distribute the International Code of Conduct to all States and to include it in the manual on practical measures against corruption, to be revised and expanded pursuant to Council resolution 1995/14; requested the Secretary-General to consult with States and relevant entities in order to elaborate an implementation plan and submit it to the Commission at its sixth session, in conjunction with his report to be submitted pursuant to Council resolution 1995/14; and also requested the Secretary-General to continue to collect information and legislative and regulatory texts from States and relevant intergovernmental organizations, in the context of his continuing study of the problem of corruption.

The International Code of Conduct for Public Officials was adopted as a tool to guide Member States in their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties. The Code deals with the following aspects: (a) the general principles that should guide public officials in the performance of their duties (i.e. loyalty, integrity, efficiency, effectiveness, fairness and impartiality); (b) conflict of interest and disqualification; (c) disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; (d) acceptance of gifts or other favours; (e) the handling of confidential information; and (f) the political activity of public officials, which, according to the Code, shall not be such as to impair public confidence in the impartial performance of the their functions and duties.

B. Adoption of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions

On 16 December 1996, in its resolution 51/191, the General Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions; requested the Commission on Crime Prevention and Criminal Justice to examine ways, including through legally binding international instruments, without in any way precluding, impeding or delaying international, regional or national actions, to further the implementation of the resolution and the Declaration, so as to promote the criminalization of corruption and bribery in international commercial transactions; and

to keep the issue of corruption and bribery in international commercial transactions under regular review.

The United Nations Declaration against Corruption and Bribery in International Commercial Transactions includes a set of measures that each State could implement at the national level, in accordance with its own constitution, fundamental legal principles, national laws and procedures, to fight against corruption and bribery in international commercial transactions. The Declaration addresses the issue of bribery of foreign public officials and contains different provisions aimed at combating the phenomenon, including the criminalization of such bribery, as well as the denial of tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country.

In addition, Member States committed themselves to develop or maintain accounting standards and practices that improve the transparency of international commercial transactions; to develop or to encourage the development of business codes, standards or best practices that prohibit corruption, bribery and related illicit practices in international commercial transactions; to examine establishing illicit enrichment by public officials or elected representatives as an offence; and to ensure that bank secrecy provisions did not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions.

Finally, Member States committed themselves to cooperate and afford one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions, including sharing of information and documents.

The Declaration has played a pioneering role for the enactment of laws and regulations against bribery in international transactions, paving the way for the conclusion of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,³⁰ adopted by the Organization for Economic Cooperation and Development on 21 November 1997, which entered into force on 15 February 1999.

C. Adoption of the United Nations Declaration on Crime and Public Security

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its fifth session, the General Assembly approved the United Nations Declaration on Crime and Public Security by its resolution 51/60. In accordance with the Declaration, Member States undertook, inter alia, to seek to protect the security and well-being of their citizens by taking effective national measures to combat serious transnational crime and to promote bilateral, regional, multilateral and global law enforcement cooperation and assistance to that effect; and agreed to combat and prohibit corruption and bribery by enforcing applicable domestic laws against such activity, and, for this purpose, to consider developing concerted measures for international cooperation to curb corrupt practices, as well as developing technical expertise to prevent and control corruption.

³⁰ *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

D. Follow-up action on the implementation of the International Code of Conduct for Public Officials and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions

1. *Expert Group Meeting on Corruption (Buenos Aires, 17-21 March 1997)*

The Government of Argentina hosted a meeting of experts in Buenos Aires from 17 to 21 March 1997 to consider ways and means of strengthening international cooperation to promote the implementation of General Assembly resolutions 51/59 and 51/191. The conclusions and recommendations of the meeting, containing a preliminary plan for the implementation of the International Code of Conduct for Public Officials, were brought before the Commission on Crime Prevention and Criminal Justice at its sixth session, from 28 April to 9 May 1997.³¹ The deliberations among the experts with regard to the possible development of an international convention against corruption and bribery in international commercial transactions are presented below (see chap. V, sect. A).

2. *General Assembly resolution 52/87*

In its resolution 52/87, entitled “International cooperation against corruption and bribery in international commercial transactions”, the General Assembly agreed that all States should take all possible measures to further the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and of the International Code of Conduct for Public Officials; requested the Secretary-General to invite Member States to provide a report on steps taken to implement the provisions of the Declaration, including those dealing with criminalization, effective sanctions, tax deductibility, accounting standards and practices, development of business codes, illicit enrichment, mutual legal assistance and bank secrecy provisions, as well as on national anti-corruption strategies and policies, for compilation by him and consideration by the Commission on Crime Prevention and Criminal Justice, with a view to examining further steps to be taken for the full implementation of the Declaration; and requested the Commission to give attention to the question of the bribery of public office holders of States in international commercial transactions and to include in its agenda for a future session a review of action by States to implement the Declaration.

Pursuant to the above request, the Commission on Crime Prevention and Criminal Justice was informed at its seventh session (Vienna, 21-30 April 1998) about the action taken by Member States against corruption and bribery and the relevant activities undertaken by the Centre for International Crime Prevention and other intergovernmental and non-governmental organizations. The relevant report (E/CN.15/1998/3) contained specific recommendations for consideration by the Commission regarding further work in the area of action against corruption. One of those recommendations called for international action that would sustain and strengthen the existing positive international momentum and would continue forging the required international consensus on action against corruption.

³¹ See Report of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997 (E/CN.15/1997/3/Add.1, annex).

3. *General Assembly resolutions 53/176 and 54/205*

In its resolution 53/176, entitled “Action against corruption and bribery in international commercial transactions”, the General Assembly called upon Member States to take all possible measures to further the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and relevant international declarations and to ratify, where appropriate, existing instruments against corruption; and requested the Secretary-General, in close consultation with the United Nations Conference on Trade and Development, to report to the Assembly at its fifty-fifth session on measures taken by Member States and competent international and regional organizations, non-governmental organizations and the private sector to implement the resolution.

In its resolution 54/205, entitled “Prevention of corrupt practices and illegal transfer of funds”, the General Assembly called for further international and national measures to combat corrupt practices and bribery in international transactions and for international cooperation in support of those measures; while recognizing the importance of national measures, it also called for increased international cooperation through the United Nations system, in devising ways and means of preventing and addressing illegal transfers, as well as in repatriating illegally transferred funds to their countries of origin, and called upon all countries and entities concerned to cooperate in that regard; requested the international community to support the efforts of all countries aimed at strengthening institutional capacity for preventing corruption, bribery, money-laundering and the illegal transfer of funds; and decided to keep the matter under review, and in that regard requested the Secretary-General, in consultation with Member States and relevant bodies of the United Nations system, to include in the report called for in its resolution 53/176, to be submitted at its fifty-fifth session, information on progress in the implementation of the resolution and recommendations with regard to repatriating illegally transferred funds to their countries of origin.

The report submitted to the General Assembly in response to the requests contained in its resolutions 53/176 and 54/205 (A/55/405) contains the responses provided by individual countries, international organizations, groups of countries and non-governmental organizations regarding measures aimed at the prevention of corrupt practices in international commercial transactions and the illegal transfer of funds.

4. *Reporting on the implementation of the Declarations*

In its resolution 1998/21, entitled “United Nations standards and norms in crime prevention and criminal justice”, the Economic and Social Council requested the Secretary-General to prepare survey instruments on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and the International Code of Conduct for Public Officials. Pursuant to that request, in late 1999 the Secretariat sent two questionnaires concerning the above instruments to Member States. The report containing an analysis of the replies received from Member States in connection with the implementation of those instruments was submitted to the Commission on Crime Prevention and Criminal Justice at its eleventh session (Vienna, 16-25 April 2002) (E/CN.15/2002/6 and Add.1).

Although it was difficult to ascertain whether the adoption by the General Assembly of the instruments mentioned above had a direct impact on domestic legislation, the analysis of the replies to the surveys indicated that the main principles

and provisions embodied in them were reflected, to different degrees and with different modalities, in the implementation of legislation at the national level in many States.

In its resolution 1997/34, the Economic and Social Council welcomed the report of the Secretary-General on technical cooperation and coordination of activities (E/CN.15/1997/17) setting forth the information provided by Member States on their efforts to observe and implement in full General Assembly resolution 51/60; and requested the Secretary-General to seek information from Member States on the implementation of the Declaration, using a questionnaire or other means. In section I of its resolution 1998/21, the Council requested the Secretary-General to prepare survey instruments on the United Nations Declaration on Crime and Public Security. The analysis of the replies received from Member States to the relevant survey (E/CN.15/2002/11) was submitted to the Commission on Crime Prevention and Criminal Justice at its eleventh session.

Most of the responding States reported that they had adopted legislation to combat and prohibit bribery and other forms of corruption, although such measures were still pending in some countries. In many cases, measures that had been taken were linked to international instruments, a process that was likely to continue. Specific measures included both criminal offences covering conduct such as bribery and more proactive measures such as codes of ethics to discourage corruption, as well as the adoption of transparency requirements to deter and detect misconduct. Some of those measures had been introduced pursuant to the International Code of Conduct for Public Officials and the United Nations Declaration against Bribery and Corruption in International Commercial Transactions.

IV. Building political momentum for the development of anti-corruption strategies as part of counteraction against transnational organized crime

A. African Regional Ministerial Workshop on Organized Transnational Crime and Corruption (Dakar, 21-23 July 1997)

The prevention and control of corruption and bribery was one of the central themes examined by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997 and organized by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention, in cooperation with the United Nations International Drug Control Programme and with the support of the Agency for Cultural and Technical Cooperation of France. The report of the Workshop was submitted to the Commission on Crime Prevention and Criminal Justice at its seventh session (E/CN.15/1998/6/Add.1).

The Ministers adopted unanimously and recommended the implementation of the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption included in that report. In the Declaration, the Ministers reiterated their strong and sustained commitment to combat the phenomenon in all its manifestations and to promote a culture of accountability, transparency, competence and integrity in public life. For that purpose, States expressed their intention to develop programmes composed of interrelated and carefully coordinated measures, including administrative, civil, procedural and criminal legislation, as well as various regulatory provisions and administrative action designed to prevent and control corruption and bribery, as a matter of high priority. The Ministers recommended that the international community develop a

common basis for cooperation that would promote the values of good governance and would ensure that development and growth were not impeded by corrupt practices. In that connection, the elaboration of an international convention against corruption and bribery was recommended as the most effective response to the problem.

B. Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption (Manila, 23-25 March 1998)

The prevention and control of corruption and bribery, including the strengthening of regional and subregional cooperation in this field, was also one of the main themes of the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998. The report of the Meeting was also brought before the Commission on Crime Prevention and Criminal Justice at its seventh session (E/CN.15/1998/6/Add.2).

The Ministers unanimously adopted the Manila Declaration on the Prevention and Control of Transnational Crime included in the report, in which they expressed their determination and political will to promote national and regional action against transnational crime and corruption; and to strengthen the capacity of law enforcement agencies and criminal justice personnel and to upgrade their skills through specialized training in the area of transnational crime, money-laundering and other economic offences, including corruption. They confirmed their commitment to combat all corrupt practices by, inter alia, developing prevention and control measures to promote a culture of accountability and transparency, with the active involvement and support of the public; developing comprehensive anti-corruption programmes, including administrative, civil, procedural and criminal legislation, as well as regulatory provisions and administrative action; and putting into effect, as appropriate, the various provisions of the International Code of Conduct for Public Officials, the United Nations Declaration on Crime and Public Security, and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, as well as the recommendations of the Expert Group Meeting on Corruption, held in Buenos Aires from 17 to 21 March 1997, in order to strengthen national institutions and call attention, at national and international levels, to the need for addressing the problems of corruption and bribery. The participating States also encouraged the Commission on Crime Prevention and Criminal Justice, in accordance with its existing mandate, to examine the feasibility of a global convention against corruption and bribery, taking into consideration successful initiatives in that field.

V. Exploring the desirability of an international instrument against corruption

A. Expert Group Meeting on Corruption (Buenos Aires, 17-21 March 1997)

At the Expert Group Meeting on Corruption, held in Buenos Aires from 17 to 21 March 1997 (see above, under chap. III, sect. D.1), and in recommending the implementation of paragraph 4 of General Assembly resolution 51/191, in particular, the experts were of the view that the Commission on Crime Prevention and Criminal Justice should elaborate an international convention against corruption and bribery in

international commercial transactions as the most effective response to the problem. Such a convention would need to include effective enforcement mechanisms.³²

It was noted, in that connection, that successful efforts at the regional level demonstrated the feasibility of such an undertaking and constituted proof of the ability of the international community to arrive at common concepts and to devise generally acceptable methods and strategies that would form the basis of improved and effective international cooperation. It was further acknowledged that the phenomenon of corruption and bribery had become transnational in nature as a result of increasing globalization and liberalization of trade, and that it was no longer possible to deal with it effectively through national action alone. The experts stressed that the international community was in urgent need of a common basis for cooperation that would promote the values of good governance and would ensure that development and growth were not impeded by corrupt practices. While recognizing that action already under way at the national or regional level should continue and be intensified, the experts were of the view that the elaboration of such an international convention should be the ultimate objective. It was therefore strongly recommended that the Commission on Crime Prevention and Criminal Justice be requested to undertake the task as a matter of high priority, drawing also on the relevant provisions of General Assembly resolution 51/59 and Economic and Social Council resolution 1995/14. States were urged to extend to the Commission their full support and cooperation and be fully engaged in the process, in order to permit the Commission to perform that task as soon as possible.³³

B. Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March-1 April 1999)

An Expert Group Meeting on Corruption and its Financial Channels was held in Paris from 30 March to 1 April 1999, pursuant to Economic and Social Council resolution 1998/16. The report of the Meeting was submitted to the Commission on Crime Prevention and Criminal Justice at its eighth session (Vienna, 27 April-6 May 1999) (E/CN.15/1999/10).

After identifying a set of measures to improve international cooperation in combating corruption and the detection of financial flows related to corruption, the Expert Group made a series of recommendations to be considered at both the international and the national level. Furthermore, the experts were of the opinion that the international community needed to equip itself with effective international tools to control corruption as a whole and to curb its detrimental effects on economic and financial systems. In their view, Member States should examine the desirability of elaborating a universal international instrument on the subject. In that connection, they considered it necessary to take into account international best practices, such as those compiled by the Financial Action Task Force on Money Laundering, the Basel Committee on Banking Supervision, the International Organization of Securities Commissions and Transparency International, as well as the international legal instruments elaborated by other international institutions such as the Council of Europe, the European Union, the Organization for Economic Cooperation and Development and the Organization of American States, and also the negotiations taking place at that time within the United Nations on the drafting of an international convention against transnational organized crime (see below).

³² See E/CN.15/1997/3/Add.1, annex, para. 25.

³³ *Ibid.*, para. 51.

VI. The negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime

A. The inclusion of provisions targeting corruption in the United Nations Convention against Transnational Organized Crime

The issue of tackling corruption was taken up by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. At its sixth session (Vienna, 6-17 December 1999), the Ad Hoc Committee discussed, first of all, the possible inclusion in that convention of articles on the criminalization of corruption of public officials by organized criminal groups and on other measures to prevent and control such corruption.

The provision on the establishment of the offence of corruption, in particular, was the subject of extensive debate, mainly because it was deemed a limited effort against a much broader phenomenon. In view of the fact that corruption was considered one of the methods used and activities engaged in by organized criminal groups, the approach finally selected was to include a provision in the convention targeting corruption in the public sector.

Thus, article 8 of the final text of the United Nations Convention against Transnational Organized Crime³⁴ establishes a mandatory criminal offence of active and passive bribery involving a public official (para. 1) and an optional criminal offence of active and passive bribery involving a foreign public official or international civil servant (para. 2). It also criminalizes the participation as an accomplice in those offences (para. 3). Article 8 also incorporates a definition of “public official” as a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State party in which the person performs that function (para. 4).³⁵

In general terms, States parties are required to establish the offences referred to above in their domestic law independently of their transnational nature or the involvement of an organized criminal group in their commission (art. 34, para. 2, of the Convention).

In addition, article 9 requires States parties to adopt, to the extent appropriate and consistent with their legal system, legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials (para. 1). States parties are also obliged to take measures to ensure effective action by their authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (para. 2).³⁶

³⁴ United Nations, *Treaty Series*, vol. 2225, No. 39574.

³⁵ For an overview of the negotiation process regarding article 8 of the Convention, see the *Travaux préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), part one, pp. 75-86.

³⁶ For an overview of the negotiation process regarding article 9 of the Convention, see the *Travaux préparatoires...*, pp. 87-89.

**B. Attesting the need for a new international instrument against corruption:
General Assembly resolution 54/128 and follow-up action**

The delegations participating in the negotiation process for the elaboration of the United Nations Convention against Transnational Organized Crime generally agreed that that Convention could not cover the issue of corruption in a comprehensive manner. In view of that, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime decided, also at its sixth session, to consider the implementation of General Assembly resolution 54/128, entitled “Action against corruption”, in which the Assembly had directed the Ad Hoc Committee to incorporate into the draft convention measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials (see above); and requested the Ad Hoc Committee to explore the desirability of an international instrument against corruption, either ancillary to or independent of the convention, to be developed after the finalization of the convention and the three additional instruments referred to in Assembly resolution 53/111, and to present its views to the Commission on Crime Prevention and Criminal Justice.

At its seventh session (Vienna, 17-28 January 2000), the Ad Hoc Committee decided to take action on the issues raised by the General Assembly in its resolution 54/128. The Ad Hoc Committee was of the view that an effective international legal instrument against corruption was desirable and agreed that such an international instrument should be independent of the United Nations convention against transnational organized crime and that its drafting should commence following the completion of the negotiations on the draft convention and the draft protocols thereto. The Ad Hoc Committee was also of the view that the terms of reference and outline of scope of the new instrument should be based on sound preparatory work, which would include a thorough review and analysis of all relevant international instruments and recommendations. That analysis would be undertaken by the Secretariat in consultation with Member States and submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session. The Ad Hoc Committee also discussed whether the General Assembly should be requested to extend its mandate to enable it to develop the new instrument, on the basis of a recommendation by the Commission to the General Assembly. It was noted that, in considering that matter, it would be advisable for the Commission to take into account the experience and expertise acquired by the Ad Hoc Committee in developing the draft convention against transnational organized crime and its draft protocols, as well as the need to build on its success in dealing with such complex matters. It was agreed that the Ad Hoc Committee would transmit its views and recommendations on the implementation of resolution 54/128 to the Commission at its ninth session for appropriate action.³⁷

³⁷ See the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its seventh session (A/AC.254/25), para. 21.

VII. Placing the advanced discussions on a new international instrument against corruption on the agenda of the United Nations congresses on the prevention of crime and the treatment of offenders

A. Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Vienna, 10-17 April 2000)

Under agenda item 1 of the Tenth Congress, under the theme “The state of crime and criminal justice worldwide”, the links between organized crime and corruption were highlighted. It had already been acknowledged that there was a strong link between activities involving corruption and other organized criminal pursuits, in that organized criminal groups were involved in corrupt practices, possibly in the form of extortion, bribery or illegal political campaign contributions in order to gain an advantageous share of a particular market. Laundering illegal profits for reinvestment into the legitimate economy further strengthened that advantage.³⁸

As noted in the plenary discussions, available crime data had suggested that the growth of organized crime was especially strong where there was a culture of lawlessness, as indicated by a poor perception of the judiciary, as well as a perception of widespread corruption and poor police effectiveness.³⁹

The workshop on combating corruption organized during the Tenth Congress focused mainly on what kind of measures could work effectively against corruption. Furthermore, recommendations were made with regard to law enforcement, legislation, the private sector and civil society, as well as measures to be taken at the international level, including the promotion of debate on the possible development of a United Nations instrument against corruption.⁴⁰

At the high-level segment of the Tenth Congress, clear support was expressed for the need for an independent international instrument on corruption. As with many other crimes, corruption was seen to be no longer a matter of only local or national concern, but a truly international one.⁴¹

B. Vienna Declaration on Crime and Justice and the plans of action for its implementation

The Tenth Congress adopted the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, which was subsequently endorsed by the General Assembly in its resolution 55/59 and annexed to it. The Vienna Declaration contains a series of commitments to respond to specific problems of crime control and crime prevention. In its paragraph 16, Member States undertook to take enhanced international action against corruption, building on, inter alia, the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials, relevant regional conventions and regional and global forums; stressed the need to develop an effective international legal instrument against corruption, independent of the United Nations convention

³⁸ See the background paper for the workshop on combating corruption entitled, “International cooperation in combating transnational crime: new challenges in the twenty-first century” (A/CONF.187/9), para. 30.

³⁹ See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8), chap. V, para. 40.

⁴⁰ *Ibid.*, para. 153. (See also A/CONF.187/9, para. 90.)

⁴¹ See *Tenth United Nations Congress...*, annex I, para. 9.

against transnational organized crime; and invited the Commission on Crime Prevention and Criminal Justice to request the Secretary-General to submit to it at its tenth session, in consultation with States, a thorough review and analysis of all relevant international instruments and recommendations as part of the preparatory work for the development of such an instrument.

In paragraph 29 of the Vienna Declaration, Member States invited the Commission to design specific measures for the implementation of and follow-up to the commitments undertaken in the Declaration.

In its resolution 55/60, the General Assembly urged Governments, in their efforts to prevent and combat crime, to be guided by the results of the Tenth Congress; and requested the Secretary-General to prepare, in consultation with Member States, draft plans of action for the implementation of and follow-up to the commitments undertaken in the Vienna Declaration for consideration and action by the Commission on Crime Prevention and Criminal Justice at its tenth session.

In response to the requests set forth in the Declaration and in resolution 55/60, a document containing the draft plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (E/CN.15/2001/5) was submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session (Vienna, 8-17 May 2001). A revised text of the draft plans of action reflecting and taking into account the discussions during the tenth session of the Commission was submitted to it at its resumed tenth session (Vienna, 6 and 7 September 2001).⁴² The final text of the plans of action was taken note of with appreciation by the General Assembly in its resolution 56/261 and annexed to it.

In the field of corruption, the plans of action incorporated mandates embodied in both the Vienna Declaration and General Assembly resolutions, and set out a course of action for States and the Secretariat leading to the negotiation, adoption, ratification and implementation of a global instrument. More general measures against corruption were also listed.

In particular, section II of the plans of action recommended specific measures to implement and follow up on the commitments undertaken in paragraph 16 of the Vienna Declaration to inter alia, develop an effective international legal instrument against corruption.

With regard to national actions, Member States undertook to support the following: (a) participation in the intergovernmental open-ended expert group to prepare draft terms of reference for the negotiation of an international legal instrument against corruption;⁴³ (b) full participation in sessions of the Ad Hoc Committee for the Negotiation of a Convention against Corruption established pursuant to General Assembly resolution 55/61 (see below); (c) promoting the full and effective participation of developing countries, in particular least developed countries, in the deliberations of the intergovernmental open-ended expert group and the Ad Hoc Committee; (d) making efforts to finalize the future United Nations convention against corruption by the end of 2003, taking into consideration existing legal instruments

⁴² E/CN.15/2001/14, annex. This document replaced document E/CN.15/2001/5.

⁴³ Actions (a) and (c) were included in the revised draft plans of action for the implementation of the Vienna Declaration, annexed to document E/CN.15/2001/14, but not contained in the relevant annex to General Assembly resolution 56/261, as the intergovernmental open-ended expert group on the preparation of draft terms of reference for the negotiation of the future legal instrument against corruption had already met before the adoption of the resolution (see below).

against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime; and (e) commencing, when appropriate, the development of domestic legislative, administrative and other measures to facilitate the ratification and effective implementation of the future United Nations convention against corruption, including both domestic measures against corruption and measures to support effective cooperation with other States.

With regard to international actions, it was agreed that the Centre for International Crime Prevention, in cooperation with other relevant international and regional organizations, as appropriate, would: (a) provide substantive expertise and full secretariat services to the Ad Hoc Committee for the Negotiation of a Convention against Corruption in the course of its work; (b) ensure, with the assistance of Member States, the full and effective participation of developing countries, in particular least developed countries, in the work of the Ad Hoc Committee; (c) provide to States, on request, technical cooperation to facilitate the ratification and implementation of the future United Nations convention against corruption; (d) assist States in the establishment or intensification of bilateral and multilateral cooperation in the areas to be covered by the future United Nations convention against corruption; (e) maintain a database of existing national assessments of corruption in a standardized format and a kit of best practices against corruption; (f) facilitate the sharing of experience and expertise among States; (g) revise and update the manual on practical measures against corruption; and (h) develop technical cooperation projects to prevent and combat corruption in order to assist States, upon request, in implementing such projects under its global programme against corruption.

VIII. Shaping the framework for the negotiation of an international instrument against corruption

A. General Assembly resolutions 55/61 and 55/188

In its resolution 55/61, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable; decided to begin the elaboration of such an instrument in Vienna at the headquarters of the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention; requested the Secretary-General to prepare a report analysing all relevant international legal instruments, other documents and recommendations addressing corruption, considering, *inter alia*, obligations as regards criminalization of all forms of corruption and international cooperation, regulatory aspects of corruption and the relationship between corruption and money-laundering, and to submit it to the Commission on Crime Prevention and Criminal Justice at an intersessional meeting in order to allow Member States to provide comments to the Commission prior to its tenth session; and requested the Commission, at its tenth session, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

In the same resolution, the General Assembly requested the Secretary-General to convene, upon completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the related protocols, an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against

corruption; requested the intergovernmental open-ended expert group to submit the draft terms of reference for the negotiation of the future legal instrument, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, to the Assembly at its fifty-sixth session for adoption; and decided to establish an ad hoc committee for the negotiation of such an instrument to start its work in Vienna as soon as the draft terms of reference for such negotiation were adopted.

The report on existing international legal instruments, recommendations and other documents addressing corruption, the preparation of which was requested by the General Assembly as mentioned above, was before the Commission on Crime Prevention and Criminal Justice at its tenth session (E/CN.15/2001/3 and Corr.1).

In its resolution 55/188, the General Assembly reiterated its request to the Secretary-General, as contained in its resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the repatriation of such funds to the countries of origin; and decided to keep the matter under review, and, in that regard, requested the Secretary-General, in consultation with Member States and relevant bodies of the United Nations system, to prepare, without duplicating material contained in the report requested by it in its resolution 55/61, an analytical report containing information on the progress made in the implementation of the resolution and, bearing in mind resolution 54/205, concrete recommendations, inter alia, with regard to the repatriation of illegally transferred funds to the countries of origin, and to submit the report to it at its fifty-sixth session under the item entitled “Sectoral policy questions: business and development”.

The reports submitted to the General Assembly in response to that request (A/56/403 and Add.1) reflected the responses provided by countries and relevant bodies of the United Nations system regarding measures adopted to implement the resolution, as well as concrete recommendations with regard to the repatriation of illegally transferred funds to the countries of origin.

B. Tenth session of the Commission on Crime Prevention and Criminal Justice (Vienna, 8-17 May 2001): thematic discussion on progress made in global action against corruption

At its tenth session, the Commission on Crime Prevention and Criminal Justice conducted a thematic discussion on progress made in global action against corruption. The purpose of the discussion was to facilitate a spontaneous, interactive dialogue among Member States on national initiatives to combat corruption and asset recovery.⁴⁴

On the issue of the development of a new international legal instrument against corruption, the majority of Member States expressed their full support for the call of the General Assembly for such an instrument, which, in the view of several delegations, should be given the form of a convention. As a general and preliminary observation, the view was expressed that the future legal instrument should build upon the experience of regional organizations, under the framework of which international legal instruments

⁴⁴ For an overview of the deliberations in the context of that thematic discussion, see the report of the Commission on Crime Prevention and Criminal Justice on its tenth session (*Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part one, chap. II.B, paras. 8-24.

addressing corruption had been already negotiated, as well as of the United Nations Convention against Transnational Organized Crime.

Several speakers stressed that the new legal instrument should have a multidisciplinary approach and should cover a wide range of areas. In particular, reference was made to the issues of definition of corruption, definition of public officials, corruption in the private sector, sanctions, jurisdiction and international cooperation. Special emphasis was placed on the need for effective measures to prevent corruption, including measures to promote integrity and good governance, as well as the adoption of codes of conduct. In addition, some delegates highlighted the importance of including in the future legal instrument provisions against the application of bank secrecy laws to impede or hinder criminal investigations or other legal proceedings relating to corruption, as well as specific provisions on money-laundering to include the proceeds of corruption.

According to some delegations, the new legal instrument should also provide for technical and operational assistance to developing countries with a view to strengthening their institutional capacity to enforce anti-corruption measures, as well as investigating and prosecuting the offences specified in the future instrument. Other proposals were presented during the discussion, including one on the establishment of a mechanism for compensation to parties that had suffered damage as a result of an act of corruption. The need to establish a mechanism to monitor the implementation of the future legal instrument was also stressed.

In addition, there was broad recognition of the need for the future legal instrument to address the question of illegally transferred funds and the repatriation of such funds to the countries of origin. Numerous delegations expressed the view that the new instrument should focus more on the issue of illicitly obtained funds than on the issue of their transfer abroad, since most of the time the latter was done within the framework of legality.⁴⁵

C. Economic and Social Council resolution 2001/13

On the recommendation of the Commission at its tenth session, the Economic and Social Council adopted resolution 2001/13, entitled “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds”, in which it requested the intergovernmental open-ended expert group referred to in resolution 55/61 to consider, within the context of its mandates, the following issues as possible items of work to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contributed to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption might be a predicate offence in relation to

⁴⁵ See the report of the Secretary-General on prevention of corrupt practices and illegal transfer of funds (A/56/403), paras. 80-83.

money-laundering; and (d) establishing criteria for the determination of countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

In addition, the Council requested the Secretary-General, further to his analytical report on progress made in the implementation of resolution 55/188, to prepare, for the ad hoc committee referred to in resolution 55/61, a global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption, and its impact on economic, social and political progress, in particular in developing countries, and to include in his study innovative ideas regarding appropriate ways and means of enabling the States concerned to obtain access to information on the whereabouts of funds belonging to them and to recover such funds.⁴⁶

D. Intergovernmental open-ended expert group on the preparation of draft terms of reference for the negotiation of the future legal instrument against corruption (Vienna, 30 July-3 August 2001)

Pursuant to General Assembly resolution 55/61, the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001.⁴⁷

In the discussions during the meeting there was general agreement that corruption must be approached simultaneously from several sides. The spirit that had made possible the finalization of the United Nations Convention against Transnational Organized Crime was a solid basis for the development of a new global instrument that could propel the international community one important step further in the dynamic process of changing corruption from the secret that everyone knew about into the public enemy that the international community was determined to defeat.

Turning the attention of the Intergovernmental Open-Ended Expert Group to item 4 of its agenda, its Chairman suggested that the draft terms of reference the Expert Group had been mandated to prepare should achieve the following two objectives: (a) to provide organizational guidance that would ensure a successful negotiating process, giving the Ad Hoc Committee for the Negotiation of an International Legal Instrument against Corruption, established pursuant to General Assembly resolution 55/61, sufficient flexibility to fulfil its tasks, while enabling the Secretariat to service it in an efficient manner; and (b) to provide a workable and flexible framework that would guide the Ad Hoc Committee in developing the new international legal instrument, taking into account the views and concerns of all States.

For the purpose of facilitating the work of the Expert Group, the discussion was structured along the following lines: (a) nature of the international legal instrument against corruption; (b) matters pertaining to the content of the new instrument, for possible consideration by the Ad Hoc Committee; and (c) matters pertaining to the procedure to be followed for the negotiation process.

During the discussion that ensued, consensus emerged on the fact that the instrument should be a convention and numerous speakers supported the proposal that

⁴⁶ Upon its completion, the study was submitted to the Ad Hoc Committee for the Negotiation of a Convention against Corruption at its fourth session, held in Vienna from 13 to 24 January 2003 (A/AC.261/12).

⁴⁷ See the report of the meeting in document A/AC.260/2 and Corr.1.

its title should be “United Nations Convention against Corruption”. Some delegations felt that the title should contain some reference to the concepts of safeguarding integrity and promoting good governance.

Several delegations pointed out that key principles constituting the rationale and philosophical basis of the new draft convention should be enunciated, perhaps in a preamble. Other delegations stressed the usefulness of not excluding the possibility that there might eventually be an annex or protocol to the new convention, which could include, for example, a code of conduct or code of ethics, that would apply, inter alia, to public officials. Some other delegations questioned whether the group of experts should be suggesting an annex or protocol at that stage. According to some delegations, another issue that would need to be considered was the relationship of the new convention to existing conventions.

Some delegations pointed out that the new convention should be developed with full respect for the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States and with appreciation for differing legal systems.

It was pointed out that the new convention should be developed taking into account existing international legal instruments against corruption in order to ensure consistency and avoid unnecessary duplication. It was deemed important to ensure that the new convention build on the achievements of those instruments and not set lower standards. Furthermore, it was pointed out that the United Nations Convention against Transnational Organized Crime contained many provisions that encompassed useful solutions and represented significant achievements, reached by consensus. To the extent appropriate, the new convention should make full use of those provisions in order to facilitate and expedite the process of negotiation. As regards the possible content of the new convention, there was general agreement that the Expert Group should be mindful of its mandate, which was to prepare draft terms of reference for the negotiation of the new convention. In that connection, there was consensus in ensuring that the Ad Hoc Committee be vested with maximum flexibility, as a key condition for the successful fulfilment of its assigned tasks.

With that in mind and assisted by an informal discussion paper submitted to it by the Chairman in consultation with the other members of the Bureau, the Expert Group focused its discussion on a number of elements for consideration by the Ad Hoc Committee. Those elements were definitions, scope, criminalization, prevention, sanctions, confiscation and seizure, international cooperation, including extradition, mutual legal assistance and law enforcement cooperation and exchange of information, technical assistance, transfer of funds of illicit origin and return of such funds and mechanisms for monitoring implementation. The Expert Group felt that the list of elements should include jurisdiction, liability of legal persons, collection, exchange and analysis of information and protection of witnesses and victims. There was general agreement that the list was not intended to be exhaustive and that the final determination of which elements would be discussed and in what form was incumbent upon the Ad Hoc Committee, which was the body mandated by the General Assembly to negotiate the new convention.

Some delegations were of the view that the new convention should be a broad-based instrument encompassing all forms of corruption. In particular, some delegations made reference to the need to cover public and private, active and passive corruption, trafficking in influence, international bribery, improper use of state property, obstruction of justice and abuse of power. According to some other delegations, the new convention

should apply to domestic, foreign and international civil servants, as well as to politicians. Some other delegations expressed the view that there should be a definition of those performing a “public function”, to whom the new convention should also extend. Other delegations advised caution, because attempting to broaden the approach excessively was fraught with many conceptual, legal and policy-related difficulties. That discussion notwithstanding, there was broad support for a comprehensive and multidisciplinary approach in developing the new convention.

Some delegations stressed the importance of including civil and administrative law measures in addition to criminal provisions. They considered that such an approach would provide a higher probability of efficiency and effectiveness, because of the multifaceted nature of corruption and the need to address those issues under diverse legal systems. In that connection, some delegations made reference to the need to include in the new convention civil and criminal liability, remedies and sanctions, in addition to relevant preventive measures. In the view of some delegations, criminal law measures against corruption would need to include the reversal of the burden of proof and the lifting of bank secrecy. According to other delegations, criminalization of illicit enrichment was also necessary. Other delegations voiced concern regarding the reversal of the onus of proof, as that would run contrary to constitutional principles or international obligations and would thus be difficult to envisage.

It was the general view of the Expert Group that prevention should be an important element of the new convention. It was therefore essential to strike a balance between prevention and enforcement measures in developing the new instrument. Prevention was perceived by some delegations as including the promotion of integrity, transparency and good governance. Specific preventive measures could include development of codes of conduct or ethics, an effective and impartial civil service, effective systems for financing political parties, establishment of independent oversight bodies, free and transparent media, transparent public procurement rules, effective regulation of financial systems, denial of tax deductibility of bribes, an independent judiciary and the effective implementation of the rule of law. In that context, some delegations, however, stressed the point that in that area the group should not duplicate the work already done by United Nations institutions and other international organizations of a global nature (e.g. the World Trade Organization or the World Bank). Many delegations expressed the view that, in order to be effective, prevention should address the social and economic factors that were associated with corruption. Many delegations also stressed the importance of both the involvement and participation of civil society in preventing corruption and the promotion of public awareness. In that connection, the view was expressed that the Ad Hoc Committee should take into account the contributions of non-governmental organizations, as well as those of national and regional auditing bodies.

Many delegations deemed it essential that the new convention effectively address the question of the transfer of funds or assets of illicit origin derived from acts of corruption and the need to develop adequate measures to ensure the return of such funds or assets. Some delegations were of the view that the question of identification of the legitimate beneficiary of funds or assets of illicit origin, as well as the question of title over those funds or assets would need to be addressed. Extensive reference was made to Economic and Social Council resolution 2001/13, which constituted a useful basis for the deliberations of the Ad Hoc Committee on the matter.

Many delegations emphasized the importance of effective mechanisms for monitoring the implementation of the new convention. For some delegations those mechanisms should be regional or multilateral. According to those delegations, several

existing international legal instruments provided useful sources of inspiration in that regard. Other delegations expressed concern regarding the appropriateness of regional and multilateral mechanisms, as they had a bearing on sovereignty matters, and preferred national monitoring mechanisms.

The Expert Group also discussed matters pertaining to the organization of the negotiation process. There was general agreement that the Ad Hoc Committee should elect its own bureau, which should be composed of two representatives of each of the five regional groups. There was also general agreement that the new convention should be concluded by the end of 2003. Regarding the number and duration of the sessions of the Ad Hoc Committee, the views expressed ranged from two to six sessions of one or two weeks each per year. On the recommendation of the Chairman, the Expert Group agreed that the Ad Hoc Committee should meet as required, holding no fewer than three sessions of two weeks each per year.

The Expert Group placed particular emphasis on the need for the broadest possible participation of countries in the work of the Ad Hoc Committee. The Expert Group was therefore of the view that, following the practice of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, donor countries should be called upon to make resources available to the United Nations to cover the cost of participation of developing countries, in particular least developed countries, including local expenses.

The Expert Group recommended to the General Assembly at its fifty-sixth session, through the Commission on Crime Prevention and Criminal Justice at its resumed tenth session and the Economic and Social Council, the adoption of a draft resolution outlining the terms of reference for the negotiation of the future convention against corruption. At its resumed tenth session, held in Vienna on 6 and 7 September 2001, the Commission approved the report of the Intergovernmental Open-Ended Expert Group and the draft resolution contained therein and decided to transmit the report and the draft resolution through the Economic and Social Council to the Assembly for consideration and adoption, as appropriate (A/56/402-E/2001/105).

In preparation for the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, the Secretariat invited Governments to submit proposals concerning the substantive content of the draft convention against corruption.

E. Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001)

The Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was held in Buenos Aires from 4 to 7 December 2001.

Several delegations that had not submitted proposals indicated their commitment to the development of a comprehensive and effective convention against corruption. Those delegations intended to make contributions and to state their position through appropriate proposals as the negotiations proceeded and to participate actively in the negotiations with a view to achieving consensus.

The Informal Preparatory Meeting agreed that a useful outcome of its work would be the development of a consolidation of proposals for the text of the draft convention

against corruption. It was the understanding of the Meeting that such a consolidation would not entail any pronouncement on the merits or content of the proposals, nor would it involve any negotiation of their substance. It was also the understanding of the Meeting that the consolidation would be without prejudice to the right of all delegations to submit proposals as they deemed appropriate and opportune during the negotiation process for consideration and action by the Ad Hoc Committee for the Negotiation of a Convention against Corruption.

The Informal Preparatory Meeting then proceeded to review a draft consolidated text prepared by the Secretariat, with a view to eliminating possible duplication and exploring the compatibility of the various proposals. The purpose of the review was to produce a text of the draft convention that would facilitate the work of the Ad Hoc Committee. The product of the review would be considered by the Ad Hoc Committee as the basis for its work at its first session, together with any other proposals submitted by delegations during the negotiation process. The Informal Preparatory Meeting requested the Secretariat to complete the consolidated text on the basis of the submitted proposals and to distribute the document as soon as each of its language versions became available, at the same time making those language versions available on the website of the Centre for International Crime Prevention.

In carrying out its review of the consolidated text, the Informal Preparatory Meeting decided that a number of proposals that expressed national positions or offered policy guidance without containing specific drafting suggestions ought to be preserved as a valuable reference for its work.⁴⁸

F. General Assembly resolutions 56/186 and 56/260

In its resolution 56/186, entitled “Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin”, the General Assembly invited the Economic and Social Council to finalize its consideration of the draft terms of reference for the negotiation of a United Nations convention against corruption, by which an Ad Hoc Committee would be requested to consider, *inter alia*, the elements of prevention and combating the transfer of funds of illicit origin from acts of corruption, including the laundering and returning of such funds, expeditiously; called, while recognizing the importance of national measures, for increased international cooperation, *inter alia*, through the United Nations system, in support of efforts by Governments to prevent and address the transfer of funds of illicit origin, as well as to return such funds to the countries of origin; and requested the Secretary-General to submit at its fifty-seventh session a report on the implementation of the resolution,⁴⁹ and also, upon the completion of the work of the Ad Hoc Committee referred to above, to submit recommendations on options for further consideration by the Assembly regarding the issue of preventing and addressing the transfer of funds of illicit origin and returning such funds to the countries of origin.

In its resolution 56/260, the General Assembly took note with appreciation of the report of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, as endorsed by the Commission on Crime Prevention and Criminal Justice at its

⁴⁸ See A/AC.261/2 and Corr.1, paras. 19-22.

⁴⁹ The reports submitted to the General Assembly in response to the request contained in its resolution 56/186 (A/57/158 and Add.1 and 2) reflected the responses provided by States and by the United Nations system regarding measures adopted to implement the resolution.

resumed tenth session and by the Economic and Social Council; decided that the Ad Hoc Committee for the Negotiation of a Convention against Corruption, established pursuant to resolution 55/61, should negotiate a broad and effective convention, which, subject to the final determination of its title, would be referred to as the “United Nations Convention against Corruption”; requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, *inter alia*, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

In the same resolution, the General Assembly invited the Ad Hoc Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1), as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2001/13, as resource materials in the accomplishment of its tasks; and requested the Ad Hoc Committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime.

In its resolution, the General Assembly also decided that the Ad Hoc Committee would be convened in Vienna in 2002 and 2003, as required, and would hold no fewer than three sessions of two weeks each per year, according to a schedule to be drawn up by its bureau, and requested the Committee to complete its work by the end of 2003; further decided that the bureau of the Ad Hoc Committee would be elected by the Committee itself and would consist of two representatives from each of the five regional groups; invited donor countries to assist the United Nations in ensuring the full and effective participation of developing countries, in particular least developed countries, in the work of the Ad Hoc Committee; urged States to be fully involved in the negotiation of the convention and to endeavour to ensure continuity in their representation; and invited the Ad Hoc Committee to take into consideration the contributions of non-governmental organizations and civil society, in accordance with United Nations rules and following the practice established by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.

IX. Epilogue

The first session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was held in Vienna from 21 January to 1 February 2002. The Ad Hoc Committee held six more sessions in order to finalize the text of the Convention, as follows: second session from 17 to 28 June 2002; third session from 30 September to 11 October 2002; fourth session from 13 to 24 January 2003; fifth session from 10 to 21 March 2003; sixth session from 21 July to 8 August 2003; and seventh session from 29 September to 1 October 2003.

The Convention, as approved by the Ad Hoc Committee, was adopted by the General Assembly by its resolution 58/4 of 31 October 2003 and opened for signature

by Member States at a High-level Political Conference convened for that purpose in Merida, Mexico, from 9 to 11 December 2003. It entered into force on 14 December 2005.

The adoption and entry into force of the first global legal instrument against corruption was the result and culmination of efforts and initiatives within the United Nations system that date back more than 30 years. The purpose of this introduction has been to provide an outline of that historical evolution, starting from early initiatives and describing the intermediate development of “soft law” instruments and the discussions on the desirability and feasibility of a global instrument against corruption. Thus, the introduction can be seen as a prelude to the presentation of the negotiation process for the elaboration of the Convention covered in the main part of the present publication.

Part One

**Text of the United Nations
Convention against Corruption**

Preamble

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“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,²

“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,

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) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² See the Inter-American Convention against Corruption (see E/1996/99).

“*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,²

“*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 for Drug Control and Crime Prevention 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 1977,³ the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,⁴ 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 1997,⁵ 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 1997,⁶ 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 1998,⁷ the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁸ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,^{9, 10}

“*[Adopts the United Nations Convention against Corruption, annexed to the present resolution.]*

“*[Have agreed as follows:]*”

³ See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

⁴ See E/1996/99.

⁵ *Official Journal of the European Communities*, C 195, 25 June 1997.

⁶ E/CN.15/1998/6/Add.1, chap. I.

⁷ E/CN.15/1998/6/Add.2, chap. I.

⁸ Council of Europe, *European Treaty Series*, No. 173.

⁹ *Ibid.*, No. 174.

¹⁰ See General Assembly resolutions 51/59 and 53/176.

Rolling text (A/AC.261/3 (Part IV))*“Preamble¹¹*

“The States Parties to this Convention,

“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,

“Recognizing that international cooperation is essential to the fight against corruption,

“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,

“Acknowledging the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights,

“Have agreed as follows:”

Notes by the Secretariat

1. The part of the rolling text A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The preambular language cited above was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States of America (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

2. During the first reading of the draft text, it was decided that the preambular paragraphs under chapter V of the draft convention would be moved to the preamble of the draft convention.

3. 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 (see footnote 12 below).

¹¹ Text taken from the proposal submitted by the United States of America (A/AC.261/IPM/19).

Fourth session: Vienna, 13-24 January 2003**Rolling text (A/AC.261/3/Rev.3)***“Preamble¹²*

“[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,

“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,

¹² 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.

“*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 1977,¹³ the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,¹⁴ 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 1997,¹⁵ 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 1997,¹⁶ 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 1998,¹⁷ the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,¹⁸ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,^{19, 20}

“*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,²¹

“*Recognizing* that international cooperation is essential to the fight against corruption,²¹

“*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,²¹

“*Acknowledging* the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights,²¹

“*[Adopts the United Nations Convention against Corruption, annexed to the present resolution.]*

“*[Have agreed as follows:]*”

¹³ See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

¹⁴ See E/1996/99.

¹⁵ *Official Journal of the European Communities*, C 195, 25 June 1997.

¹⁶ E/CN.15/1998/6/Add.1, chap. I.

¹⁷ E/CN.15/1998/6/Add.2, chap. I.

¹⁸ Council of Europe, *European Treaty Series*, No. 173.

¹⁹ *Ibid.*, No. 174.

²⁰ See General Assembly resolutions 51/59 and 53/176.

²¹ 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.

Sixth session: Vienna, 21 July-8 August 2003**Rolling text (A/AC.261/3/Rev.5)***“Preamble²²*

“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 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 may 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, ethical values and justice, as well as at the sustainable development of nations,

“Convinced also that the globalization of the world’s economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

“Convinced further of the need to provide to States, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

“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,

“Determined to prevent, detect and deter 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,

“Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

“Bearing in mind that the eradication of corruption is a responsibility of States and that they must cooperate with one another, with the support and involvement of civil society, if their efforts in this area are to be effective,

²² At the sixth session of the Ad Hoc Committee, the Chairman submitted the text of the preamble that appears in the rolling text, in an effort to assist the Ad Hoc Committee in its deliberations (A/AC.261/L.243/Rev.1).

“*Bearing also in mind* fundamental principles, such as the general objective of good governance, 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 United Nations Office on Drugs and Crime 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 African 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 1977,²³ the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,²⁴ 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 1997,²⁵ the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State of the African Union on 12 July 2003, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,²⁶ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,²⁷

“*Welcoming also* the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,²⁸

“*Have agreed as follows:*”

Notes by the Secretariat

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the preamble, as amended (see A/AC.261/25, paras. 28, 29 and 31). The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

²³ See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

²⁴ See E/1996/99.

²⁵ *Official Journal of the European Communities*, C 195, 25 June 1997.

²⁶ Council of Europe, *European Treaty Series*, No. 173.

²⁷ *Ibid.*, No. 174.

²⁸ General Assembly resolution 55/25, annex I.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,²⁹ 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 1997,³⁰ 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 1997,³¹ the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,³² the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,³³ and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,³⁴

Have agreed as follows:

²⁹ See E/1996/99.

³⁰ *Official Journal of the European Communities*, C 195, 25 June 1997.

³¹ See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

³² Council of Europe, *European Treaty Series*, No. 173.

³³ *Ibid.*, No. 174.

³⁴ General Assembly resolution 55/25, annex I.

Chapter I

General provisions

Article 1. Statement of purpose

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 1
“Statement of purpose*

“Option 1¹

“The purposes of this Convention are:

“(a) To promote and strengthen measures to prevent and combat more effectively corruption and criminal acts related specifically to corruption;

“(b) To promote, facilitate and support cooperation among States Parties in the fight against corruption [and to assist States Parties in building systems that foster integrity].

“Option 2²

“The purpose of this Convention is to promote international cooperation to deter, detect, combat and punish corruption. It also seeks to promote and strengthen the development of mechanisms necessary to ensure the effectiveness of measures and actions to punish acts of corruption in the exercise of public functions and acts associated with the exercise of such functions, as well as corruption among individuals.”

¹ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Rolling text (A/AC.261/3/Rev.1)*“Article 1
“Statement of purpose³*

“The purposes of this Convention are:

“(a) To promote and strengthen measures to prevent and combat more effectively corruption and [criminal] [all other]⁴ acts related specifically to corruption;

“(b) To promote, facilitate and support international⁵ cooperation in the fight against corruption, including the return of the proceeds of corruption [to their countries of origin];⁶

“[(c) To promote integrity and good governance.]”⁷

Third session: Vienna, 30 September-11 October 2002***Colombia (A/AC.261/L.94)****“Article 1
“Statement of purpose**Subparagraph (c)*

“(c) To promote integrity and good public and private governance, the rule of law, transparency and accountability.”

³ This article was revised at the first session of the Ad Hoc Committee. One delegation proposed that this article be entitled “Purposes of the Convention”.

⁴ In carrying out its first reading of the draft text, the Ad Hoc Committee at its first session considered it necessary to retain these two formulations pending a determination of the nature of the convention, which would be possible only after consideration of several substantive provisions of the draft text. Ukraine proposed the formulation “criminal acts and other offences related specifically to corruption” (A/AC.261/L.5).

⁵ At the first session of the Ad Hoc Committee, one delegation expressed the view that this formulation should be expanded to include cooperation through international and regional organizations.

⁶ During the first reading of the draft text, many delegations expressed the view that the statement of purpose would not be complete without the inclusion of the issue of transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and the return of such funds. However, it was felt that the choice of terms would depend on decisions regarding the formulation of the substantive provisions of the convention on this subject. At the early stage of the first reading, pending those decisions, the word “return” was used in the revision of the draft text. Many delegations expressed their preference for the word “repatriation”, while some delegations were of the view that the word “disposition” might be more appropriate. Some delegations proposed that the formulation used in Economic and Social Council resolution 2001/13 be employed. The words “to their countries of origin” were placed in square brackets pending examination of the substantive issues involved and decisions on the final formulation of the substantive provisions.

⁷ At the first session of the Ad Hoc Committee, a number of delegations objected to the inclusion of integrity and good governance in the objective of the draft convention, given the fact that the purpose of the convention, once adopted, would be to prevent and combat corruption and to support international cooperation in that context and that dealing with the subject of integrity and good governance in the draft convention would allow for intervention in the affairs of States and non-respect for national sovereignty. Therefore, those delegations suggested that integrity and good governance, as well as transparency and accountability, were general principles that should be stated in the preamble of the convention. Other delegations supported the inclusion of those principles in the statement of purpose. While no decision was taken on this matter at the first session of the Ad Hoc Committee, it was thought that a determination of the nature of the convention would provide the clarity required to permit a decision on the matter.

Yemen (A/AC.261/L.105)

*“Article 1
“Purposes of the Convention*

“This Convention aims at achieving the following:

“(a) To encourage and strengthen measures to combat corruption, criminal acts and other criminal acts related to corruption;

“(b) To encourage, facilitate and support cooperation between States Parties and international and regional organizations in the fight against corruption, including the return of the proceeds of corruption to their countries of origin;”

Libyan Arab Jamahiriya (A/AC.261/L.143)

*“Article 1
“Statement of purpose*

“Subparagraph (a)

“(a) To propagate and strengthen measures to prevent and combat more effectively corruption and all other criminal acts related specifically to corruption;”

“Subparagraph (b)

“It is proposed to replace the words ‘to their countries of origin’, which appear in square brackets at the end of the subparagraph, with the words ‘to their original sources’, as the word ‘source’ has greater significance and is also a term used legally.

Rolling text (A/AC.261/3/Rev.2)

*“Article 1
“Statement of purpose*

“The purposes of this Convention are:

“(a) To promote [propagate] [encourage] and strengthen measures to prevent [detect] combat [and eradicate] [more efficiently and effectively] corruption [in all its forms] [and criminal acts and other offences related specifically to corruption];

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

“[(c) To promote integrity, ethical conduct [the rule of law, transparency and accountability] and good public and private governance [good management of public affairs].]”

Notes by the Secretariat

1. On the recommendation of its bureau, the Ad Hoc Committee at its third session decided to defer its consideration of chapter I, on general provisions, until it had completed its consideration of chapter II, on preventive measures, and the articles on criminalization in chapter III.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)***

*“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 corruption⁸ [to their countries of origin] [to their original sources];⁹

“[(c) To promote integrity, accountability and good governance.]”¹⁰

Notes by the Secretariat

2. At its fifth session, the Ad Hoc Committee provisionally approved the text of article 1, subparagraph (a) (see A/AC.261/16, para. 25).

Sixth session: Vienna, 21 July-8 August 2003***Rolling text (A/AC.261/3/Rev.5)***

*“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 in asset recovery;

⁸ Several delegations expressed their preference for the alternative phrase “, including in the area of asset recovery”.

⁹ The Ad Hoc Committee decided to revert to this subparagraph following the conclusion of its deliberations on chapter V of the draft convention.

¹⁰ 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.

“(c) To promote integrity, accountability and proper management of public affairs and public property.”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved the text of article 1, subparagraphs (b) and (c) (see A/AC.261/22, para. 22).

4. At its seventh session, the Ad Hoc Committee considered, finalized and approved article 1 (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*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 in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2. Use of terms

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 2
“Definitions [Use of terms]”*

“For the purposes of this Convention:

“Option 1¹

“(a) ‘Public official’ shall mean any person holding a legislative, administrative or judicial office in a State Party, whether appointed or elected, and any person in the State Party exercising a public function, including for a public agency or public enterprise;

“Option 2²

“(a) For the purposes of this Convention, the terms ‘public official’, ‘government officer’ and ‘public servant’ shall also denote a person who:

“(i) Performs public functions de facto, regardless of whether that person has been formally appointed or assigned to perform such functions;

“(ii) Holds a public office but in practice performs the functions specific to another post despite not having been formally appointed or assigned to perform such functions;

“(iii) Possesses recognized power or influence in government or public service or administration although without formally holding a public post; or

“(iv) Possesses recognized power or influence in government or public service or administration although formally holding a public office not compatible with that power or influence.

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

“Option 3³

“(a) ‘Public official’ shall mean any person or employee of the State or its agencies, including those who have been selected, appointed, commissioned or elected to perform activities or functions in the name of the State or in the service of the State, and who holds a legislative, administrative or judicial office, at any level of its hierarchy;

“Option 4⁴

“(a) ‘Public official’, ‘government official’ or ‘public servant’ shall mean any official or employee of the State or its agencies, including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy;

“Option 5⁵

“(a) ‘Public official’ shall mean any elected or appointed person who, in accordance with the scope of the penal law of the country concerned, is considered an official exercising a public office or serves as a member of a public institution in the executive, legislative or judiciary fields;

“Option 6⁶

“(a) ‘Holder of public office’ shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, including the head of State or Government, minister or parliamentarian, paid or honorary, any person performing a public function for a government department, public agency or a public enterprise and any official or agent of a public international organization;

“(b) ‘Public works’ shall refer to the works carried out in each State Party and in its affiliated organizations;⁵

“(c) ‘Official’ shall mean any person who holds a legislative, administrative or judicial post at any hierarchical level or in any department of government or public administration. By extension, it also applies to any person who performs official functions on a permanent or occasional basis, including persons employed in an enterprise, or any legal person, such as institutions, financial agencies, funds or other public entities;⁷

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). In its proposal, Colombia offered the following alternative definition of the term “public official”:

“‘Public official’ shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.”

This alternative is identical to the definition that appears in article 8 of the Organized Crime Convention.

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁶ Text taken from a proposal submitted by Pakistan.

⁷ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). At the first session of the Ad Hoc Committee, South Africa proposed to amend subparagraph (c) to read as follows (see A/AC.261/L.47):

“(c) ‘Official’ shall mean any director, functionary, officer, agent or employee serving in any capacity whatsoever in a public body, private organization, corporate body, political party, institution or other employment, whether under a contract of service or a contract for service or otherwise and whether in an executive capacity or not;”

“(d) ‘Official of an international organization’ shall mean:⁸

“(i) Any official or other contracted employee, within the meaning of the status of public officials, of any public international, regional or supranational organization;

“(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;

“(e) ‘Foreign State’ shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;⁹

“Option 1⁹

“(f) ‘Foreign public official’ shall mean any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign State, including for a public agency or public enterprise;

“Option 2¹⁰

“(f) ‘Foreign public official’ shall mean any person who performs a public function or holds a position, post or commission of any kind for a foreign country, including for a public agency or public enterprise;

“Option 1¹¹

“(g) ‘Property’ shall mean assets 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;

“Option 2

“(g) ‘Property’ shall mean assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate or relating to ownership or other rights pertaining to such assets;¹⁰

“(h) ‘Proceeds of crime’ shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;¹²

“Option 1¹³

“(i) ‘Freezing’ or ‘seizure’ shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody

⁸ Text taken from the proposals submitted by France (A/AC.261/IPM/10) and Mexico (A/AC.261/IPM/13).

⁹ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

¹⁰ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

¹¹ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10) and Turkey (A/AC.261/IPM/22).

¹² Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10), Mexico (A/AC.261/IPM/13) and Turkey (A/AC.261/IPM/22).

¹³ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10) and Mexico (A/AC.261/IPM/13).

or control of property on the basis of an order issued by a court or other competent authority;

“Option 2¹⁴

“(i) ‘Freezing’ or ‘seizure’ shall mean temporarily prohibiting the transfer, conversion, selling or moving of goods based on the order of a court or another authorized body or the temporary placing of the goods under the trusteeship or control of it;

“Option 1¹³

“(j) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

“Option 2¹⁴

“(j) ‘Confiscation’ shall refer to the permanent confiscation of assets based on the order of a court or other authorized body, including delivery, as appropriate;

“(k) ‘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;¹³

“(l) ‘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.¹⁵

“Option 1¹⁶

“(m) ‘Corruption’ shall denote an act whereby a public official:

“(i) Gives a sum of money or other illicit advantage to an individual with a view to his or her performing an illicit or illegal act, whether criminal or not;

“(ii) Influences an individual in some other way with a view to his or her performing an illicit or illegal act, whether criminal or not;

“(iii) Influences another public official with a view to his or her acting or refraining from acting in breach of his or her duties, whether or not an economic or other advantage is involved; or

“(iv) Influences another public official with a view to his or her acting or refraining from acting in the exercise of his or her duties, whether or not an economic or other advantage is involved, provided that the influence is exerted for the purpose of ensuring that the other public official will act or decide in a particular manner.

“For the purposes of this Convention, the term ‘corruption’ shall additionally apply to any of the acts described in subparagraphs [...] and [...] of this article if their

¹⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

¹⁵ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and France (A/AC.261/IPM/10).

¹⁶ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

objective is to maintain in power — under the same or another name — the group that is exercising governmental authority or to enable that group to gain power within another public or government entity.

“Option 2¹⁷

“(m) ‘Corruption’ shall mean the promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or prospect thereof. It shall also be understood as defined in the domestic law of the State where the criminal act or omission is cited, without prejudice to provisions requiring signatory States to adopt necessary legislative or other measures to establish as criminal offences covered by this Convention certain acts of corruption:

“(i) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value or other benefit in exchange for any act or omission in the performance of his or her public functions;

“(ii) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value or other benefit in exchange for any act or omission in the performance of his or her public functions;

“(iii) Any act or omission in the discharge of his or her duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or herself or for a third party;

“(iv) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

“(v) Participation as a principal, co-principal, instigator, accomplice or accessory after the fact or in any other manner in the commission or attempted commission of or in any collaboration or conspiracy to commit any of the above acts;

“Option 3¹⁸

“(m) ‘Corruption’ includes:

“(i) Accumulation of wealth by any public official or holder of public office in his or her own name, in the name of his or her spouse, children or any kin or in the name of his or her frontman by exploiting his or her office or official position;

“(ii) Wrongful gain by misappropriation of public funds;

“(iii) Amassing wealth by violating the trust reposed in him or her as a public official or holder of public office;

“(iv) Bribes or commissions in any national or international business transaction;

“(v) Amassing wealth by malfeasance and misfeasance or any other corrupt practice;

¹⁷ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

¹⁸ Text taken from a proposal submitted by Pakistan.

“(vi) Possession of wealth and assets beyond known sources of income through unassessed income, but shall not include any wealth that, though not disclosed, could be accounted for;

“(n) ‘Public function’ shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal]¹⁹ person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;²⁰

“(o) ‘International organization’ shall mean a public, intergovernmental, private or non-governmental organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;²⁰

“(p) ‘Suspicious transaction’ shall mean [...];¹⁹

“(q) ‘Legal person’;²¹

“(r) ‘Preventive measures’;²¹

“(s) ‘Act of corruption’ shall mean [...];¹⁹

“(t) ‘Transfer of assets derived from acts of corruption’ shall mean [...];¹⁹

“(u) ‘Repatriation of funds’ shall mean [...];¹⁹

“(v) ‘Illicit enrichment’ shall mean [...].”¹⁹

Notes by the Secretariat

1. The part of the rolling text A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on the “Use of terms” cited below was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

¹⁹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

²⁰ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

²¹ Text taken from the proposal submitted Austria and the Netherlands (A/AC.261/IPM/4).

Rolling text (A/AC.261/3 (Part IV))

“Article [...]”²²

“Use of terms

“For the purposes of this chapter:

“(a) ‘Assets or property’ shall mean assets 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;

“(b) ‘Confiscation’, which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;

“(c) ‘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;

“(d) ‘Requested State’ shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

“(e) ‘Requesting State’ shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets;

“(f) ‘Public official’ shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, any person exercising a public function for a government, including for a public agency or public enterprise, and any official or agent of a public international organization.”

Ukraine (A/AC.261/L.6)

“Article 2

“Ukraine proposes to revise paragraph (a) of article 2, option 1, of the draft convention against corruption, to read as follows:

“(a) ‘Public official’ shall mean any person authorized to perform functions in a State Party and any person exercising a public function in the non-state sector of a State Party.”

²² Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

Egypt (A/AC.261/L.9)*“Article 2*

“Egypt proposes to revise paragraph (a) of article 2, option 1, of the draft convention against corruption, to read as follows:

“(a) ‘Public official’ shall mean any person who occupies a public office, in accordance with the laws of the State concerned, in executive, legislative or judicial fields, whether he is appointed, elected or charged with a public service or carries out tasks in a public utility entity or institution;”

Czech Republic (A/AC.261/L.16)*“Article 2**“Definitions*

“The Czech Republic proposes to include the following in article 2 of the draft convention against corruption:

“(a) ‘Public official’ shall mean any person holding a legislative, executive, military or administrative office [and in some States Parties also a judicial or law enforcement office] in a State Party, whether appointed or elected, or any person in the State Party exercising a public function, including for a public agency or public enterprise; this office or position can be held at any level of the vertical or horizontal hierarchy of the State;

“... ”

“(d) ‘Official of an international organization’ shall mean any international civil servant or other contracted employee of any public international, intergovernmental or non-governmental organization who carries out functions equivalent to those performed by the public official of a State;

“... ”

“(f) ‘Foreign public official’ shall mean any person holding a legislative, executive, military or administrative office [and in some States also a judicial or law enforcement office] in a foreign State, whether appointed or elected, and any person in the foreign State exercising a public function, including for a public agency or public enterprise; this office or position can be held at any level of the vertical or horizontal hierarchy of the State;”

Rolling text (A/AC.261/3/Rev.1)*“Article 2
“Definitions [Use of terms]”*

“For the purposes of this Convention:

“Option 1²³

“(a) ‘Public official’ shall mean any person holding a legislative, administrative or judicial office in a State Party, at any level of its hierarchy, whether appointed or elected, and any person in the State Party exercising a public function, including for a public agency or public enterprise;

“Option 2²⁴

“(a) ‘Public official’ shall mean any person holding a legislative, administrative or judicial office in a State Party and any other person exercising a public function for the State Party, also in the non-state sector of a State Party, including for a public agency, a public enterprise and a public utility, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;²⁵

“[Subparagraphs (b) and (c) were deleted.]”

“(d) ‘Official of an international organization’²⁶ shall mean:

“(i) Any official or other contracted employee within the meaning of the status of public officials,²⁷ of any public international, regional or supranational organization;

“(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;

“(iii) Any agent of such an organization and any other person not being in its service but carrying out a function of that organization;²⁸

²³ Proposal submitted at the first session of the Ad Hoc Committee by France and Mexico, at the request of the Chairman. This proposal was intended to reflect the proposals of other delegations, which suggested formulations of this definition in the same vein. This effort notwithstanding, the attention of the Ad Hoc Committee was called to the proposals submitted by the Czech Republic (A/AC.261/L.16) and Ukraine (A/AC.261/L.6) (see above).

²⁴ Proposal submitted at the first session of the Ad Hoc Committee by the delegation of Germany, at the request of the Chairman. This proposal was intended to reflect the proposals of other delegations, which suggested formulations of this definition in the same vein. This effort notwithstanding, the attention of the Ad Hoc Committee was called to the proposals submitted by Egypt (A/AC.261/L.9) (see above) and the Russian Federation (A/AC.261/L.8). It was suggested that the two options for this definition might not be alternative but complementary.

²⁵ Pakistan wished to retain the following formulation as an alternative to both options:

“(a) ‘Holder of public office’ shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, including the head of State or Government, minister or parliamentarian, paid or honorary, any person performing a public function for a government department, public agency or a public enterprise and any official or agent of a public international organization.”

²⁶ At the first session of the Ad Hoc Committee, Pakistan proposed replacing these words with the words “Official of a public international organization”.

²⁷ At the first session of the Ad Hoc Committee, Pakistan proposed that the words “within the meaning of the status of public officials” be replaced with the words “enjoying a status comparable to that of a public official in a State Party”.

²⁸ This subparagraph is a proposal submitted at the request of the Chairman by the delegation of Germany, supported by other delegations, at the first session of the Ad Hoc Committee.

“(e) ‘Foreign State’ shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;

“(f) ‘Foreign public official’ shall mean any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign State, including for a public agency or public enterprise;²⁹

“(g) ‘Property’ shall mean assets 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 [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets];

“(h) ‘Proceeds of crime’ shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

“(i) ‘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;

“(j) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;³⁰

“(k) ‘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;

“(l) ‘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;

“(m) ‘Corruption’ shall mean engaging in or inducing acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly given, whether for oneself or on behalf of another;³¹

²⁹ At the first session of the Ad Hoc Committee, Germany proposed the following definition:

“‘Foreign public official’ shall mean any person holding a legislative, administrative or judicial office in a foreign State and any other person exercising a public function for a foreign State, also in the non-state sector of the foreign State, including for a public agency, a public enterprise and a public utility, as defined in the domestic law of the foreign State and as applied in the pertinent area of law of the foreign State.”

³⁰ Mexico proposed the insertion of the words “including delivery, as appropriate”.

³¹ The text of this subparagraph was developed and proposed by the Vice-Chairman with responsibility for this chapter, in consultation with the delegations of Azerbaijan, China, Slovenia and Ukraine. It was not discussed at the first session of the Ad Hoc Committee. The Philippines proposed the following formulation:

“‘Corruption’ shall mean the promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or the prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”

Colombia suggested that if a sufficiently broad definition could not be agreed upon, the convention should not include a definition of corruption. Instead, the convention should identify and criminalize acts of corruption in the chapter on criminalization.

“(n) ‘Public function’ shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal] person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;³²

“(o) ‘International organization’ shall mean a [public,] intergovernmental, [private or non-governmental] organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;³³

“(p) ‘Suspicious transaction’ shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer’s business activity, exceeds the normally applicable parameters of the market or has no clear legal basis and could constitute or be connected with unlawful activities in general;³⁴

“(q) ‘Legal person’;

“(r) ‘Preventive measures’;

“(s) ‘Act of corruption’ shall mean [...];

“(t) ‘Transfer of assets derived from acts of corruption’ shall mean [...];

“(u) ‘Repatriation of funds’ shall mean [...];³⁵

“(v) ‘Illicit enrichment’ shall mean [...].”

Slovenia proposed to include the following as an article in the draft convention (see A/AC.261/L.3):

“Article [...]

“Corruption is each violation of acting according to duty, as a result of directly or indirectly promised, offered, given, requested, accepted or anticipated advantage, whether for oneself or on behalf of another.”

Azerbaijan proposed the following text for paragraph (m) (see A/AC.261/L.7):

“(m) ‘Corruption’ shall mean any act or omission the purpose of which is the illicit acquisition of material or other benefits, privileges or advantages owing to a public official’s position, the status of the represented authority, or official powers or opportunities deriving from such status or powers, and also bribery by physical or juridical persons of the aforementioned officials through the offering, promising or giving of such benefits, privileges or advantages”.

China suggested the following wording on the definition of corruption (see A/AC.261/L.12):

“(m) ‘Corruption’ shall mean any act or omission with the intention of illicitly obtaining benefits by taking advantage of a position, abusing functions or committing dereliction of duty and any other specifically related acts”.

Ukraine proposed the following language for article 2, paragraph (m) (see A/AC.261/L.26):

“(m) ‘Corruption’ shall mean violations of formally designated obligations of a public nature under the influence of private interests with the intention of illicitly obtaining advantages, as well as other violations directly related to the fulfilment of private interests at public cost”.

³² At its first session, the Ad Hoc Committee decided to revert to this definition at a later stage, as it was related to the definition of “public official”. The Russian Federation proposed the following definition (A/AC.261/L.8):

“‘Public function’ shall mean any activity performed by a physical person who was elected or is in state or municipal service in any legislative, executive or judicial organ of state power or any municipal body, organization or institution or who is in the service of a local self-government body.”

³³ Several delegations were of the view that this definition was not necessary, as the matter was adequately covered with the definition of “official of an international organization”. The question of inclusion of private or intergovernmental organizations, as well as the use of the term “public” to qualify an intergovernmental organization, was debated extensively at the first session of the Ad Hoc Committee. It was deemed appropriate to revert to consideration of this definition, including taking a decision on whether to retain it, at a later stage.

³⁴ Proposal submitted by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

³⁵ At the first session of the Ad Hoc Committee, Ukraine proposed the following definition for the term “Return of proceeds to their country of origin” (see A/AC.261/L.31):

“(j) ‘Return of proceeds to their country of origin’ shall mean the return of financial or other assets having material value to the State or non-State sector of the country from which they were illegally taken and transferred to another country.”

Notes by the Secretariat

2. At the first session of the Ad Hoc Committee, South Africa proposed to add the following subparagraph in article 2 of the draft convention (see A/AC.261/L.47):

“‘Business’ shall mean any business, trade, profession, calling, manufacture or undertaking of any kind or any other activity carried out by any person within a State Party for the acquisition of gain or profit and shall include all property derived from or used in or for the purpose of carrying out such activity and all the rights and liabilities arising from such activity.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

*“Article 63³⁶
“Use of terms*

“For the purposes of this chapter:

“(a) ‘Assets or property’ shall mean assets 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;

“(b) ‘Confiscation’, which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;³⁷

“(c) ‘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;^{38, 39}

“(d) ‘Requested State’ shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

³⁶ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

³⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that this definition required clarification. Further, those delegations considered that the concept of title passing to the State carrying out the confiscation might not be appropriate for the purpose of this chapter, as it would contradict the notion that illicitly acquired assets belonged to the State of origin. Some delegations suggested that, for the purposes of this chapter, the definition of “confiscation” should be extended to include return or restitution of assets.

³⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words “public official” should be replaced with the words “public or private official”.

³⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested a more general formulation, along the lines of “offences covered by this Convention”, instead of a listing of specific offences.

“(e) ‘Requesting State’ shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets;⁴⁰

“(f) ‘Public official’ shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, any person exercising a public function for a Government, including for a public agency or public enterprise, and any official or agent of a public international organization.”⁴¹

Third session: Vienna, 30 September-11 October 2002

Czech Republic (A/AC.261/L.98)

“Article 2 “Definitions [Use of terms]

“1. For the purposes of this Convention:

“(a) ‘Public official’ shall mean any person holding a legislative, administrative or judicial office in a State Party and any other person exercising a public function for the State Party, also in the non-state sector of a State Party, including for a public agency, a public enterprise and a public utility, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

“(b) ‘Foreign State’ shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;

“(c) ‘Foreign public official’ shall mean any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign State, including for a public agency or public enterprise;

“(d) ‘International organization’ shall mean a [public,] intergovernmental [, private or non-governmental] organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;

⁴⁰ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that subparagraphs (d) and (e) should be deleted, as they were unnecessary. Some delegations suggested that, instead of these definitions, a definition for “affected State” should be added.

⁴¹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that the future convention should have a general definition for “public officials”, which would apply to the entire convention. Further, some delegations suggested that reference should be made to officials of intergovernmental and non-governmental organizations, as well as to officials of associations or organizations receiving funding from the State.

Zambia proposed an amended definition for “public official” (A/AC.261/L.71) as follows:

“(f) ‘Public official’ shall mean any person in the employment of a State Party, its agencies, local authorities or parastatals and shall include any elected or appointed person holding office in the legislative, executive or judicial branch of a State Party, or exercising public functions or duties in any of its agencies or enterprises, whether such membership, office or employment is permanent or temporary, full- or part-time, paid or unpaid.”

Zambia also proposed the inclusion of an additional definition for “private official”.

“(e) ‘Official of an international organization’ shall mean:

“(i) Any official or other contracted employee within the meaning of the status of public officials, of any public international, regional or supranational organization;

“(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;

“(iii) Any agent of such an organization and any other person not being in its service but carrying out a function of that organization;

“(f) ‘Public function’ shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal] person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;

“(g) ‘Legal person’.

“2. ‘Property’ shall mean assets 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 [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets].

“3.

“(a) ‘Proceeds of crime’ shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

“(b) ‘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;

“(c) ‘Suspicious transaction’ shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer’s business activity, exceeds the normally applicable parameters of the market or has no clear legal basis and could constitute or be connected with unlawful activities in general;

“(d) ‘Illicit enrichment’ shall mean [...];

“(e) ‘Corruption’ shall mean engaging in or inducing acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly given, whether for oneself or on behalf of another;

“(f) ‘Act of corruption’ shall mean [...].

“4.

“(a) ‘Preventive measures’;

“(b) ‘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;

“(c) ‘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;

“(d) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

“(e) ‘Transfer of assets derived from acts of corruption’ shall mean [...];

“(f) ‘Repatriation of funds’ shall mean [...].

“5.

“(a) ‘Public sector’;

“(b) ‘Conflict of interest’;

“(c) ‘Political party’;

“(d) ‘Serious crime’;

“(e) ‘Organized manner’;

“(f) ‘Public interest’;

“(g) ‘Private sector’;

“(h) ‘Shared public and private ownership’.”

Proposal submitted by the Chairman (A/AC.261/L.128)

“It is proposed that the discussion of paragraph (a) of article 2 should take place on the basis of the following text:

*“Article 2
“Definitions [Use of terms]”⁴²*

“For the purpose of this Convention:

“(a) ‘Public official’ shall mean [an official holding public office, that is,] any person holding a legislative, [executive,] administrative, judicial [or military] office in a State Party, [at any level of its hierarchy,] whether appointed or elected, [paid or honorary,] [including the head of State or Government, a minister or a parliamentarian,] and any person performing [exercising] a public function for the State Party, including for a [government department,] [and in the non-state sector of a State Party for a] public agency, public enterprise, [public utility,] [public or mixed institution or independent interest] [as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party] [and any official or agent of a public international organization.]”

⁴² The proposal was submitted by the Vice-Chairman responsible for chapter I, acting as the Chairman, as a basis for the discussion of subparagraph (a) of article 2, the subparagraph containing the definition of a public official. It draws on options 1 and 2 for that subparagraph in document A/AC.261/3/Rev.1 and on proposals submitted by Algeria, Belarus, the Czech Republic, Lebanon and Pakistan.

Rolling text (A/AC.261/3/Rev.2)

*“Article 2
“Definitions [Use of terms]”⁴³*

“For the purpose of this Convention:

“(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];

“[(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];⁴⁴

“(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 [19 bis] 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];⁴⁵

⁴³ The text of subparagraphs (a)-(d) is the product of the second reading of the draft convention, carried out by the Ad Hoc Committee at its third session. The text of the remaining subparagraphs was produced by the Vice-Chairman with responsibility for this chapter of the draft convention, in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

⁴⁴ See the proposal submitted by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114). Chile proposed the following definition (see A/AC.261/L.117):

“(n) ‘Public function’ shall mean any temporary or permanent activity, whether paid or unpaid, performed by a natural or legal person in the name of the State or in the service of the State, or its institutions or its entities, at any level of its hierarchy;”.

⁴⁵ At the third session of the Ad Hoc Committee, Algeria proposed the following language for the term “foreign official holding public office” (see A/AC.261/L.96):

“(j) ‘Foreign official holding public office’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign State, including for a public agency or public enterprise;”.

“(d) ‘Official of [a public]⁴⁶ international organization’ shall mean:

“(i) Any official or other contracted employee within the meaning of the status of public officials, [enjoying a status comparable to that of a public official in a State Party]⁴⁶ of any public international, regional or supranational organization [of any organization established, for whatever purpose, by two or more States] [whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention];

“[(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;]

“(iii) Any agent of such an organization and any other person not being in its service [not enjoying the status of an international official] but carrying out a function of that organization;

“(e) ‘International organization’ shall mean a [public,] intergovernmental, [private or non-governmental] organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;⁴⁷

“(f) ‘Property’ shall mean assets 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 [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets];

“(g) ‘Proceeds of crime’ shall mean any property [rights or privileges]⁴⁸ derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this 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 [and for a renewable period of not more than six months];⁴⁹

“(i) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority [competent court]⁵⁰ [including delivery, as appropriate];⁵¹

“(j) ‘Predicate offence’ shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence [in accordance with this Convention]⁴⁹ as defined in article [...] [Criminalization of the laundering of proceeds of crime] of this Convention;

⁴⁶ Proposed by Pakistan at the first session of the Ad Hoc Committee (see footnote 27 above).

⁴⁷ Several delegations were of the view that this definition was not necessary, as the matter was adequately covered with the definition of “official of an international organization”. The question of inclusion of private or intergovernmental organizations, as well as the use of the word “public” to qualify an intergovernmental organization, was debated extensively at the first and third sessions of the Ad Hoc Committee. It was deemed appropriate to revert to consideration of this definition at a later stage, including taking a decision on whether to retain it. During the second reading of the draft text, the Vice-Chairman with responsibility for this chapter of the draft convention indicated his intention to conduct open-ended informal consultations during the fourth session of the Ad Hoc Committee, with a view to finding a way of merging this subparagraph with subparagraph (d). He further indicated that the product of those consultations would be placed in square brackets for further consideration at the third reading of the draft convention, as many delegations wished to have this subparagraph deleted.

⁴⁸ Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

⁴⁹ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

⁵⁰ Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

⁵¹ Mexico had proposed the insertion of these words at the first session of the Ad Hoc Committee. Yemen supported this proposal at the third session of the Ad Hoc Committee.

“(k) ‘Controlled delivery’ shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into [into or through]⁴⁹ 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 [in accordance with this Convention];⁴⁹

“(l) ‘Corruption’ shall mean engaging in or inducing acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage, or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly or indirectly given, whether for oneself or on behalf of another;⁵²

“(m) ‘Corruption offence’ shall mean any offence that constitutes unlawful use by a public official of authority officially delegated to him or her or of his or her official powers or associated possibilities for the purpose of satisfying his or her private interest or the interest of third parties (referred to as ‘acts of corruption’) or the performance by him or her of other acts that create conditions for the commission of acts of corruption or conceal or facilitate such acts (referred to as ‘other acts relating to corruption’);⁵³

“(n) ‘Act of corruption’ shall mean [...];⁵⁴

“(o) ‘Suspicious transaction’ shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer’s business activity, exceeds the normally applicable parameters of the market or has no clear legal basis [or is based on fictitious or bogus contracts or deals]⁵⁵ and could constitute or be connected with unlawful activities in general;⁵⁶

⁵² The text of this subparagraph was developed and proposed by the Vice-Chairman with responsibility for this chapter of the draft convention, in consultation with the delegations of Azerbaijan, China, Slovenia and Ukraine. It was not discussed at the first session of the Ad Hoc Committee. The Philippines proposed the following formulation:

“‘Corruption’ shall mean the promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or the prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”

Colombia suggested that if a sufficiently broad definition could not be agreed upon, the convention should not include a definition of “corruption”. Instead, the future convention should identify and criminalize acts of corruption in the chapter on criminalization. During the third session of the Ad Hoc Committee, Algeria proposed the following language (A/AC.261/L.96):

“‘Corruption’ means the solicitation or acceptance by an official of offers or promises, for his or her benefit or for that of a third party, or the solicitation or receipt of gifts, presents, commissions, bonuses, property or benefits of any kind in order that the official carry out or refrain from carrying out an act in the performance of his or her functions or an act that, though not part of his or her functions, has or may have been facilitated by his or her functions”.

Chile suggested the following text (A/AC.261/L.117):

“(m) ‘Corruption’ shall mean:

“(i) Any act in which a public official or an individual offers, grants, requests, receives or delivers economic advantages of any kind, for himself or herself or for a third party, in exchange for performing or refraining from performing an act incumbent upon such an official or individual by virtue of his or her office or function or for performing an illicit act, whether criminal or not;

“(ii) Any act in which a public official exerts influence over another, for his or her own benefit or for that of a third party or in exchange for performing or refraining from performing an act incumbent upon him or her by virtue of his or her office or function;

“(iii) Any act of abuse of public or private functions resulting in an improper deviation from the general or public interest to the individual interest, mainly for profit-making purposes; and

“(iv) Any participation as the perpetrator, co-perpetrator, instigator or inciter, accomplice or abettor in the commission or attempted commission of, or conspiracy or plot to commit, any of the acts referred to above;”

The Vice-Chairman with responsibility for this chapter indicated his intention to conduct open-ended informal consultations during the fourth session of the Ad Hoc Committee in order to seek a resolution of this matter.

⁵³ Proposed by Ukraine at the third session of the Ad Hoc Committee (A/AC.261/L.139).

⁵⁴ Proposed by Colombia (A/AC.261/IPM/14).

⁵⁵ Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

⁵⁶ Proposed by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

“(p) ‘Legal person’ shall mean those entities, organizations or moral persons, in the public or private sector, defined as such in the law of States Parties;⁵⁷

“(q) ‘Preventive measures’;⁵⁸

“(r) ‘Transfer of assets derived from acts of corruption’ shall mean [...];⁵⁴

“(s) ‘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 located⁵⁹ to the affected State Party, even if they have been transformed, converted or disguised;⁶⁰

“(t) ‘Illicit enrichment’ shall mean [...];⁵⁴

“(u) ‘Conflict of interest’ shall mean a situation in which the overlapping of the private interests and public functions of a public official results in that person obtaining an unlawful benefit;⁶¹

“(v) ‘Money-laundering’ shall mean:

“(i) The conversion or transfer of property, in the knowledge that it is the proceeds of an offence, 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 consequences of his or her conduct;

“(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of property, or of rights with respect to it, in the knowledge that such property is the proceeds of an offence;

“(iii) The acquisition, possession or use of property, in the knowledge, at the time of receipt, that such property is the proceeds of an offence;

“(iv) Participation in or association with the commission or attempted commission and also aiding, facilitating, inducing or counselling the commission of any offence related to the laundering of money derived from corruption, as well as the administration, custody, disposition, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property:

“a. In the knowledge that such property is the proceeds of an offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person involved in the commission of a corruption offence to evade the legal consequences of his or her action;

“b. Which derives from or is the proceeds of a corruption offence if the person involved is obliged, by virtue of his or her profession, position or office, to take the measures necessary to verify the licit origin of such property and has not done so;⁵⁷

⁵⁷ Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

⁵⁸ Proposed by Austria and the Netherlands (A/AC.261/IPM/4).

⁵⁹ This phrase is included in order to obviate the need to define the receiving State party.

⁶⁰ Proposed by Colombia at the third session of the Ad Hoc Committee (A/AC.261/L.94).

⁶¹ Proposed by Argentina at the third session of the Ad Hoc Committee (A/AC.261/L.102). At the same session, Colombia proposed the following language for this term (see A/AC.261/L.94):

“‘Conflict of interest’ shall mean the situation that arises when the private interest of a public official, international public official or foreign public official conflicts or competes with the general interest of the public function.”

“(w) ‘Private official’ shall mean any employee, executive, manager or official of any entity, organization, enterprise or private legal person other than those in which public officials exercise their functions;⁵⁷

“(x) ‘Effective collaborator’⁶² shall mean any natural or legal person who provides relevant help in the investigation or prosecution of a corruption offence;”^{57, 63, 64}

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 2⁶⁵

“Definitions [Use of terms]

“For the purpose of this Convention:

“(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];

“[(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 [19 bis] of this

⁶² It was suggested that the words “effective collaborator” should replace the word “whistle-blower” wherever it appeared in the draft convention.

⁶³ At the third session of the Ad Hoc Committee, the Czech Republic proposed to reorder the subparagraphs of article 2 into several paragraphs in order to obtain a more logical structure (see above in document A/AC.261/L.98). The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee consider this proposal during the third reading.

⁶⁴ The text of article 63 of the draft convention remained unchanged. The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee keep in mind the existence of proposed definitions in article 63 of the draft text (A/AC.261/3/Rev.1/Add.1) and consider them in the context of article 2 during the third reading.

⁶⁵ Subparagraphs (j)-(k) and (o)-(x) of this article were not discussed at the fourth session of the Ad Hoc Committee. It was decided that thorough consideration of these subparagraphs would be undertaken at the third reading of the draft convention.

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];

“[(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;]^{66, 67, 68}

“[(e) ‘Public international organization’ shall mean an intergovernmental organization;]^{69, 70, 71}

“(f) ‘[Assets or]⁷² property’ shall mean assets 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 [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets];

“(g) ‘Proceeds of crime’ shall mean any property [rights or privileges] derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this 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 [and for a renewable period of not more than six months];

“Option 1

“(i) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority [competent court] [including delivery, as appropriate];⁷³

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ 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 Organized Crime Convention, instead of “officials of an international organization”, and a separate definition would not be necessary.

⁶⁹ 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 Vienna Convention on the Law of Treaties of 1969 (United Nations, *Treaty Series*, vol. 1155, No. 18232), was preferred.

⁷⁰ 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.

⁷¹ 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.

⁷² This phrase was included in the proposal of the United States previously contained in article 63 of the draft text (A/AC.261/3/Rev.1/Add.1). At its fourth session, the Ad Hoc Committee decided to incorporate into article 2 the proposed definitions previously contained in article 63.

⁷³ The insertion of these words was a proposal of Turkey (A/AC.261/IPM/22). Yemen supported this proposal at the third session of the Ad Hoc Committee.

“Option 2

“(i) ‘Confiscation’, which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;⁷⁴

“(j) ‘Predicate offence’ shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence [in accordance with this Convention] 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 [into or through] 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 [in accordance with this Convention];⁷⁵

“Option 1^{76, 77}

“(l) ‘Corruption’ shall mean engaging in acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly or indirectly given, whether for oneself or on behalf of another;⁷⁸

“Option 2

“(l) Notwithstanding the acts of corruption generally recognized in various legal jurisdictions, the use of the term ‘corruption’ in this Convention shall include

⁷⁴ This definition was previously contained in article 63 and was incorporated into article 2 pursuant to a decision of the Ad Hoc Committee at its fourth session. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that this definition required clarification. Further, those delegations were of the view that the concept of title passing to the State carrying out the confiscation might not be appropriate for the purpose of chapter V, as it would contradict the notion that illicitly acquired assets belonged to the State of origin. Some delegations suggested that, for the purposes of this chapter, the definition of confiscation should be extended to include return or restitution of assets.

⁷⁵ The Russian Federation proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee. Chile proposed the following wording for this paragraph (see A/AC.261/L.157):

“‘Controlled delivery’ shall mean the dispatch of an illicit or suspect consignment, albeit previously authorized by the competent authorities, of money or movable assets derived from or connected with offences covered by this Convention, for the purpose of enabling such consignment to enter, pass through or leave the territory of a State Party with a view to identification of the perpetrators, accomplices or abettors of the offences.”

⁷⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was a continued difference of opinion about whether the draft convention should include a definition of “corruption”. The Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, coordinated by Pakistan, for the purpose of reviewing subparagraphs (l)-(n) and producing a consolidated formulation of those subparagraphs. The product of the working group is reflected in options 1 and 2. The Ad Hoc Committee did not review this text after its distribution. It should be recalled that a number of delegations maintained a strong preference for not including a definition of corruption in the draft convention.

⁷⁷ The informal working group decided to recommend the deletion of former subparagraphs (m) and (n) referring to “corruption offence” and “act of corruption” respectively. There were two distinct approaches towards the definition of “corruption” in the informal working group. One approach was to provide a general definition of corruption as a concept and the other approach was to refer to corruption only as a term to be used in the text of the future convention. The informal working group therefore recommended that the Ad Hoc Committee consider the following two options during the third reading of the draft text.

⁷⁸ This formulation was based on a previous proposal made by Ukraine and is similar in large part to the previous formulation of subparagraph (l). That formulation was favoured by those who supported the general approach to the definition.

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 future. Nothing herein shall limit the future criminalization of further acts of corruption or the adoption of measures to combat such acts.^{79, 80}

“(m) ‘Suspicious transaction’ shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer’s business activity, exceeds the normally applicable parameters of the market or has no clear legal basis [or is based on fictitious or bogus contracts or deals] and could constitute or be connected with unlawful activities in general;^{81, 82}

“(n) ‘Legal person’ shall mean those entities, organizations or moral persons, in the public or private sector, defined as such in the law of States Parties;^{83, 84}

“(o) ‘Transfer of assets derived from acts of corruption’ shall mean [...];

“(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 located⁸⁵ to the affected State Party, even if they have been transformed, converted or disguised;

“(q) ‘Illicit enrichment’ shall mean [...];

“(r) ‘Conflict of interest’ shall mean a situation in which the personal, family or economic interests of a public official affect the impartial discharge by him or her of the duties incumbent upon him or her as the holder of the position, post or commission;⁸⁶

“(s) ‘Money-laundering’ shall mean:

“(i) The conversion or transfer of property, in the knowledge that it is the proceeds of an offence, 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 consequences of his or her conduct;

⁷⁹ 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.”

⁸⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Republic of Korea proposed to add the following text at the end of subparagraph (l) (A/AC.261/L.156):

“; the act of violating laws and subordinate statutes in using the budget of, acquiring, managing or disposing of property of or entering into and executing contracts with public agencies, thereby causing damage to the property of such agencies.”

⁸¹ Proposed by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

⁸² Germany proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee, noting that the term was used in the Organized Crime Convention without being defined.

⁸³ Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

⁸⁴ Some delegations proposed the deletion of this subparagraph at the fourth session of the Ad Hoc Committee.

⁸⁵ This phrase is included in order to obviate the need to define the term “receiving State Party”.

⁸⁶ Proposed by Argentina at the third session of the Ad Hoc Committee (A/AC.261/L.136).

“(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of property, or of rights with respect to it, in the knowledge that such property is the proceeds of an offence;

“(iii) The acquisition, possession or use of property, in the knowledge, at the time of receipt, that such property is the proceeds of an offence;

“(iv) Participation in or association with the commission or attempted commission and also aiding, facilitating, inducing or counselling the commission of any offence related to the laundering of money derived from corruption, as well as the administration, custody, disposition, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property:

“a. In the knowledge that such property is the proceeds of an offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person involved in the commission of a corruption offence to evade the legal consequences of his or her action;

“b. Which derives from or is the proceeds of a corruption offence if the person involved is obliged, by virtue of his or her profession, position or office, to take the measures necessary to verify the licit origin of such property and has not done so;

“(t) ‘Private official’ shall mean any employee, executive, manager or official of any entity, organization, enterprise or private legal person other than those in which public officials exercise their functions;

“(u) ‘Effective collaborator’⁸⁷ shall mean any natural or legal person that provides relevant help in the investigation or prosecution of a corruption offence;⁸⁸

“(v) ‘Affected State Party’ shall mean any State Party that has suffered or is suffering losses to public treasury assets;⁸⁹

“(w) ‘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;^{90, 91, 92}

“(x) ‘Requested State’ shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

⁸⁷ It is suggested that the words “effective collaborator” should replace the word “whistle-blower” wherever it appears in the draft convention.

⁸⁸ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Mexico proposed the deletion of this definition, because the expression no longer appeared in the draft convention as a result of the reformulation of articles 13 and 43.

⁸⁹ Proposed by Colombia at the fourth session of the Ad Hoc Committee (A/AC.261/L.155).

⁹⁰ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words “public official” should be replaced with the words “public or private official”. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Other delegations reiterated that they could not accept this change.

⁹¹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested a more general formulation, along the lines of “offences covered by this Convention”, instead of a listing of specific offences. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

⁹² Subparagraphs (w)-(y) were previously included in article 63 and were moved here following a decision of the Ad Hoc Committee at its fourth session.

“(y) ‘Requesting State’ shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets.”^{93, 94, 95}

Notes by the Secretariat

3. Article 63 was deleted. 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 were incorporated into subparagraphs (a) and (c) of article 2.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 2 “Definitions [Use of terms]

“For the purpose of this Convention:⁹⁶

“(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];

“[(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];

⁹³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that subparagraphs (x) and (y) should be deleted, as they were unnecessary. Some delegations suggested that instead of these definitions, a definition of “affected State” should be added.

⁹⁴ At the third session of the Ad Hoc Committee, the Czech Republic proposed to reorder the subparagraphs of article 2 into several paragraphs in order to obtain a more logical structure (see above in document A/AC.261/L.98). The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee consider this proposal during the third reading.

⁹⁵ The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee keep in mind the existence of proposed definitions in article 63 of the draft text (A/AC.261/3/Rev.1/Add.1) and consider them in the context of article 2 during the third reading.

⁹⁶ 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 on subparagraphs (a)-(c) submitted at its fifth session (A/AC.261/L.191), which was as follows:

“(a) ‘Public official’ shall mean any person performing a public function as a representative of or in the service of the State, whether elected or appointed, paid or unpaid, on a permanent or temporary basis, at the international, central, decentralized or autonomous levels of the State, including mixed enterprises”.

“(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];⁹⁷

“[(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];^{98, 99, 100}

“[(e) ‘Public international organization’ shall mean an intergovernmental organization];^{101, 102, 103}

“(f) ‘Property’ shall mean assets¹⁰⁴ 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;¹⁰⁵

⁹⁷ At the fifth session of the Ad Hoc Committee, Chile suggested the following language to define the term “foreign public official” (see A/AC.261/L.191):

“(b) ‘Foreign public official’ shall mean a person performing a public function in the terms set out in subparagraph (a) of this article as a representative of another State. The same criterion shall be used to define a person who represents or provides services to an international organization”.

⁹⁸ As mentioned above (see footnote 66), 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.

⁹⁹ 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 (see footnote 67 above).

¹⁰⁰ As already mentioned (see footnote 68 above), 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 Organized Crime Convention, instead of “officials of an international organization”, and a separate definition would not be necessary.

¹⁰¹ As mentioned above (see footnote 69), 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 Vienna Convention on the Law of Treaties was preferred.

¹⁰² As already mentioned (see footnote 70 above), 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.

¹⁰³ As mentioned above (see footnote 71), 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.

¹⁰⁴ It was agreed that the *travaux préparatoires* would indicate that the phrase “assets of every kind” is understood to include funds and legal rights to assets.

¹⁰⁵ 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”.

“(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;¹⁰⁶

“(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;¹⁰⁷

“(i) ‘Confiscation’, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court [or other competent authority];¹⁰⁸

“[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;¹⁰⁹

“[Subparagraphs (m)¹¹⁰-(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

¹⁰⁶The Ad Hoc Committee decided to revert to this subparagraph following the conclusion of its deliberations on chapter V of the draft convention.

¹⁰⁷It was agreed that the *travaux préparatoires* would indicate that the word “temporarily” is understood to encompass the concept of renewability.

¹⁰⁸The Ad Hoc Committee decided to revert to this subparagraph at its sixth session.

¹⁰⁹At 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.

¹¹⁰It was agreed that a note for inclusion in the *travaux préparatoires* would appear when the words “suspicious transaction” were to be used for the first time in the text of the convention. The note would 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.”

(See under article 14 of the convention.)

Party where the assets are located¹¹¹ to the affected State Party, even if they have been transformed, converted or disguised;¹¹²

“[Subparagraphs (q)-(u) were deleted.]”¹¹³

“[(v) ‘Affected State Party’ shall mean any State Party that has suffered or is suffering losses to public treasury assets];”¹¹⁴

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

Notes by the Secretariat

4. At its fifth session, the Ad Hoc Committee provisionally approved article 2, subparagraphs (f), (h), (j) and (k) (see A/AC.261/16, para. 25).

Sixth session: Vienna, 21 July-8 August 2003

Report submitted by the Chairman (A/AC.261/L.235)

“Article 2

“Definitions [Use of terms]

“Subparagraph (a)

“Option 1

“(a) ‘Public official’ shall mean:

“(i) Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;

“(ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

“(iii) Any other person defined as a ‘public official’ in the domestic law of a State Party.

“However, for the purpose of chapter II, ‘Preventive measures’, ‘public official’ shall mean any person who performs a public function or provides a public

¹¹¹ This phrase is included in order to obviate the need to define the term “receiving State Party”.

¹¹² 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.

¹¹³ A definition of the term “conflict of interest” (subparagraph (r) in document A/AC.261/3/Rev.3) would be considered if the term was included in chapter II.

¹¹⁴ During the fifth session of the Ad Hoc Committee, Brazil proposed an alternative definition (A/AC.261/L.180), as follows:

“(v) ‘Affected State Party’ shall mean any State Party that has suffered or is suffering, directly or indirectly, any damage as a result of the commission of an offence covered by this Convention”.

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.

service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

“Option 2

“(a) ‘Public official’ shall mean:

“(i) Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;

“(ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service; and

“(iii) Any other person defined as a ‘public official’.

“Each State Party shall determine to whom each of the above categories is applicable, in accordance with its domestic law.

“Option 3

“‘Public official’ shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

“Subparagraph (c)

“Option 1

“(c) ‘Foreign public official’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise.

“Option 2

“(c) ‘Foreign public official’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority, and any person exercising a public function for a foreign country, including for a public agency or public enterprise.”

Rolling text (A/AC.261/3/Rev.5)

“Article 2
“Use of terms

“(a) ‘Public official’ shall mean: (i) any person holding a legislative, executive,¹¹⁵ administrative or judicial office¹¹⁶ of a State Party, whether

¹¹⁵ It was agreed that the *travaux préparatoires* would indicate that the word “executive” is understood to encompass the military branch, where appropriate.

¹¹⁶ It was agreed that the *travaux préparatoires* would indicate that the term “office” is understood to encompass offices at all levels and subdivisions of government from national to local. In States where municipal and local self-governing bodies exist, including States where such bodies are not deemed to form an integral part of the State, “office” may be understood by the States concerned to encompass these levels also.

appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;¹¹⁷ (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a 'public official' in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II [Preventive measures] of this Convention, 'public official' may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

“[Subparagraph (b) was deleted.]”

“(c) ‘Foreign public official’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country,¹¹⁸ whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

“(d) ‘Official of a public international organization’ shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

“[Subparagraph (e) was deleted.]”

“(f) ‘Property’ shall mean assets¹¹⁹ 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;

“(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;¹²⁰

“(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;¹²¹

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

¹¹⁷It was agreed that the *travaux préparatoires* would indicate that, for the purpose of defining “public official”, each State party shall determine who is a member of the categories mentioned in subparagraph (a)(i) of this article and how each of those categories is applied.

¹¹⁸It was agreed that the *travaux préparatoires* would indicate that the term “foreign country” includes all levels and subdivisions of government, from national to local.

¹¹⁹It was agreed that the *travaux préparatoires* would indicate that the phrase “assets of every kind” is understood to include funds and legal rights to assets.

¹²⁰This subparagraph was still under consideration. The Ad Hoc Committee decided to revert to this subparagraph following the conclusion of its deliberations on chapter V of the draft convention.

¹²¹It was agreed that the *travaux préparatoires* would indicate that the word “temporarily” is understood to encompass the concept of renewability.

“(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 [...] [Laundering of proceeds of corruption] 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)]¹²² was 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 located¹²³ to the affected State Party, even if they have been transformed, converted or disguised;¹²⁴

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

Notes by the Secretariat

5. At its sixth session, the Ad Hoc Committee provisionally approved article 2, subparagraphs (a), (c), (d), (g) and (i) and the deletion of paragraphs (b), (e) and (l) (see A/AC.261/22, para. 22).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. Subparagraph (g bis) was deleted. In addition, it was not deemed necessary to include in the report of the Ad Hoc Committee on the work of its first to seventh sessions the note for the *travaux préparatoires* regarding the definition of the term ‘corruption’ (see footnote 122). The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

¹²²During the sixth session of the Ad Hoc Committee, the Vice-Chairman with responsibility for this chapter of the draft convention requested the representative of Pakistan to coordinate an informal working group charged with drafting a note for the *travaux préparatoires* on the concept of “corruption”. The results of the deliberations of that working group are contained in document A/AC.261/L.248. It was clarified that the informal working group stopped its discussion of definitions of the term “corruption” after it had been recognized that discussion was associated with certain core issues representing a sharp division for which the group had no mandate. The following draft of a note for the *travaux préparatoires* regarding the definition of the term “corruption” was proposed by the Chairman as the basis for further consultations: “The use of the term ‘corruption’ in this Convention shall refer to the acts criminalized in chapter III, as well as to such acts as States Parties may criminalize or have already criminalized.”

The Ad Hoc Committee did not have the opportunity to discuss the proposal of the informal working group at its sixth session.

¹²³This phrase was included in order to obviate the need to define the term “receiving State Party”.

¹²⁴Proposed 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.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 2
Use of terms

For the purposes of this Convention:

(a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) “Property” shall mean assets 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;

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

(f) “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;

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

(h) “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 23 of this Convention;

(i) “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.

C. Interpretative notes

The interpretative notes on article 2 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 2-7) are as follows:

Subparagraph (a)

(a) The word “executive” is understood to encompass the military branch, where appropriate;

(b) The term “office” is understood to encompass offices at all levels and subdivisions of government from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, “office” may be understood by the States concerned to encompass those levels also;

(c) For the purpose of defining “public official”, each State Party shall determine who is a member of the categories mentioned in subparagraph (a)(i) of article 2 and how each of those categories is applied;

Subparagraph (b)

(d) The term “foreign country” includes all levels and subdivisions of government, from national to local;

Subparagraph (d)

(e) The phrase “assets of every kind” is understood to include funds and legal rights to assets;

Subparagraph (f)

(f) The word “temporarily” is understood to encompass the concept of renewability.

Article 3. Scope of application

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 3
“Scope of application*

“Option 1¹

“This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of corruption and criminal acts related specifically to corruption, irrespective of whether they involve public officials or have been committed in the course of business activity.

“Option 2²

“1. 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], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.

“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.”

Rolling text (A/AC.261/3/Rev.1)

*“Article 3
“Scope of application*

“1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of corruption and criminal acts related

¹Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

²Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

specifically to corruption, irrespective of whether they involve public officials or have been committed in the course of business activity.³

“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.

“[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], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.]”⁴

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 3 “Scope of application”⁵

“1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of [and recovery of assets and proceeds derived from]⁶ corruption and [other]⁷ criminal acts related specifically to corruption [and to the confiscation and return of assets and proceeds derived from corruption],⁸ irrespective of whether they involve public officials or have been committed in the course of business activity.⁹

“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.

“[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

³ Some delegations expressed the view that this paragraph, especially its last phrase, might be construed as pre-empting the scope of the articles on criminalization or otherwise making assumptions about issues that had not yet been determined. Pakistan proposed that “concealment of proceeds of corruption” be added as an element of the scope of the convention.

⁴ 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 convention, which would enable 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 scope provision, given the structure of the draft convention.

⁵ The text of this article was amended by the Vice-Chairman with responsibility for this chapter of the draft convention in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

⁶ Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

⁷ Proposed by Belarus at the third session of the Ad Hoc Committee (A/AC.261/L.91).

⁸ Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

⁹ At the first session of the Ad Hoc Committee, some delegations expressed the view that this paragraph, especially its last phrase, might be construed as pre-empting the scope of the articles on criminalization or otherwise making assumptions about issues that had not yet been determined. Pakistan proposed that “concealment of proceeds of corruption” be added as an element of the scope of the draft convention.

provisions of articles [...] [Mutual legal assistance], [...] [Collection, exchange and analysis of information on the nature of corruption], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.”¹⁰

Notes by the Secretariat

1. Article 3 was not discussed at the fourth session of the Ad Hoc Committee. It was decided that thorough consideration of this article would be undertaken at the third reading of the draft convention.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 3¹¹

“Scope of application

“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].

“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.

“[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.]”

¹⁰At 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 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.

¹¹In 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.

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

*“Article 3¹²
“Scope of application*

“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].

“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.

“[Paragraph 3 was deleted.]”

Notes by the Secretariat

2. At the sixth session of the Ad Hoc Committee, Pakistan and the Philippines proposed to add a new paragraph to article 3 of the draft convention to read as follows (see A/AC.261/20):

“[...] Nothing in this Convention shall diminish, restrict, override or supersede any enforceable judgement, procedure or existing provision of the domestic law of a State Party to this Convention or any agreement or arrangement between any States Parties to this Convention that is more favourable than the provisions of this Convention or that is more conducive to expediting mutual legal assistance or the recovery of the proceeds of acts of corruption covered by this Convention.”

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

¹²In a discussion of this article during the fifth and sixth sessions, several delegations questioned the need for an article on scope of application. Others stressed the importance they attached to retaining one.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 3
Scope of application*

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

C. Interpretative notes

The interpretative notes on article 3 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 8 and 9) are as follows:

Paragraph 1

(a) The phrase “in accordance with its terms” is not intended to limit the application of mutual legal assistance;

(b) Offences established in accordance with the Convention should not be understood to require the adoption of new domestic legislation for the inclusion of an offence under domestic law where a corresponding offence already exists under such law.

Article 4. Protection of sovereignty

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 4¹
“Protection of sovereignty*

“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 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.”

Notes by the Secretariat

1. At the first session of the Ad Hoc Committee, the Philippines proposed the inclusion of a third paragraph to this article 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.”

¹Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13) and Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 4 of the Organized Crime Convention.

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

*“Article 4
“Protection of sovereignty²*

“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]³ 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.

“[3. The provision of this article is a fundamental provision and any provision of any article contrary to it shall be disregarded.]”⁴

Notes by the Secretariat

2. Article 4 was not discussed at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003). It was decided that thorough consideration of this article would be undertaken at the third reading of the draft convention during the sixth session of the Ad Hoc Committee.

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

*“Article 4
“Protection of sovereignty*

“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-intervention⁵ 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.⁶

² The text of this article was amended by the Vice-Chairman with responsibility for this chapter of the draft convention, in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

³ Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

⁴ Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

⁵ It was agreed that the *travaux préparatoires* would indicate that the principle of non-intervention is to be understood in the light of Article 2 of the Charter of the United Nations.

⁶ Paragraph 2 was still under consideration.

“[Paragraph 3 was deleted.]”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 4 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 4
Protection of sovereignty*

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 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.

C. Interpretative notes

The interpretative note on article 4 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 10) is as follows:

Paragraph 1

The principle of non-intervention is to be understood in the light of Article 2 of the Charter of the United Nations.

Chapter II

Preventive measures

Notes by the Secretariat

At the initial stage of the negotiations on chapter II of the draft convention, several delegations noted that a number of the preventive measures proposed (such as those referred to in articles 5, 6, 11 and 12 of the draft convention) might envisage governmental action that traditionally lay within the responsibility of their constituent states. Accordingly, those delegations observed that the situation of federal States should be taken into account in the further development of those provisions

Article 5. Preventive anti-corruption policies and practices

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 5¹

“National integrity strategy and policies

“1. Each State Party shall develop a national anti-corruption strategy to ensure that the necessary measures are nationally coordinated, in both planning and implementation.

“2. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to corruption and criminal acts related specifically to corruption.

“3. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of corruption and criminal acts related specifically to corruption.

“ ...

“6. 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. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.”

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 31, paragraphs 1, 4, 6 and 7, of the Organized Crime Convention (with slight changes).

Rolling text (A/AC.261/3/Rev.1)

“[Article 4 bis²
“[...]

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

“Article 5
“[National]³ preventive anti-corruption policies

“1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop a national anti-corruption policy⁴ that [includes the participation of civil society and]⁵ reflects the principles of rule of law, good governance, integrity, transparency and accountability.⁶

“2. Each State Party shall ensure that the necessary measures are nationally⁷ coordinated, in both planning and implementation.

“3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their vulnerability to corruption and criminal acts related specifically to corruption.

“4. Each State Party shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of corruption and criminal acts related specifically to corruption.

“5. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing and implementing a national integrity policy.⁸ Such information shall contain the name and address of bodies referred to in article [...] [Anti-corruption bodies] of this Convention.⁹

“6. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the

² Proposal submitted by China at the first session of the Ad Hoc Committee (A/AC.261/L.10). During the discussion of this proposal at the first session of the Ad Hoc Committee, many delegations were of the view that the provision of article 4 was sufficient to meet the concerns that this proposal intended to satisfy. Other delegations were of the view that if the article were retained, it should be made more mandatory and less restrictive by deleting the words “to the extent appropriate” and “to consider”.

³ During the discussion at the first session of the Ad Hoc Committee, several delegations proposed the deletion of the word “national” from the title of the article.

⁴ Some delegations proposed the deletion of the remaining text of this paragraph.

⁵ Proposal submitted by Mexico at the first session of the Ad Hoc Committee.

⁶ Proposal submitted by Spain, on behalf of the States Members of the United Nations that are members of the European Union, covering the title and paragraph 1 of this article (A/AC.261/L.18). At its first session, the Ad Hoc Committee based its first reading of this article on this proposal and on the proposal of Austria, France and the Netherlands for paragraphs 2-6 (A/AC.261/L.25).

⁷ Some delegations pointed out potential difficulties that this formulation might entail for federal States. They proposed either the extension of the clause regarding consistency with the fundamental principles of a State’s legal system, contained in paragraph 1, to this paragraph, or the further refinement of this paragraph, with the possibility of deleting this word.

⁸ Some delegations proposed to replace the words “a national integrity policy” with the words “a national policy on combating corruption”.

⁹ Some delegations proposed that this paragraph be moved to article 5 bis (“[Preventive] anti-corruption bodies”), as it contained a provision related to an institution for combating corruption and not to preventive policies. During the second reading of the draft text, at the third session of the Ad Hoc Committee, this provision was moved to article 5 bis of the draft convention (see under article 6 of the Convention).

measures referred to in this article. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.”^{10, 11}

Third session: Vienna, 30 September-11 October 2002

Notes by the Secretariat

1. Following the second reading of the draft text, at the third session of the Ad Hoc Committee, consideration of article 4 bis 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 the following proposals submitted at the third session of the Ad Hoc Committee:

United States of America (A/AC.261/L.116)

“Each State Party shall institute a multidisciplinary system for preventing corruption. Each State Party shall endeavour to include in that system, to the extent appropriate and consistent with fundamental principles of its domestic legal system, the measures set forth in articles [...] of this Convention.”

China, India, Indonesia, Iran (Islamic Republic of), Lebanon, Malaysia, Pakistan, Viet Nam and Zimbabwe (A/AC.261/L.124)

“Article 4 bis [...]

“Each State Party shall endeavour, in accordance with fundamental principles of its domestic law, to implement the preventive measures established in articles [...] [articles on preventive measures] of this Convention by legislative, administrative or other appropriate measures.”

Libyan Arab Jamahiriya (A/AC.261/L.143)

“Each State Party agrees to implement those preventive measures set out in this Convention by necessary and appropriate measures that are consistent with its legal system.”

2. At the third session of the Ad Hoc Committee, Venezuela proposed to insert a new paragraph after the first paragraph of article 5, to read as follows (see A/AC.261/L.100):

“1 bis. Each State Party shall conduct publicity campaigns inviting public involvement in the fight against corruption and disseminate guidelines for the

¹⁰Some delegations proposed the deletion of the last sentence of this paragraph or, alternatively, the inclusion of the phrase “where appropriate” to qualify the sentence.

¹¹Proposal submitted by Austria, France and the Netherlands to replace paragraphs 2-6 of the previous version of article 5 (A/AC.261/L.25). The revised proposal 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.

prevention, investigation and punishment of acts that strike at the ethical values of public life and administration and shall encourage conduct emphasizing good governance and lawfulness in the use of public property. In accordance with the principles of solidarity and responsibility and in the public interest, the media shall assist in achieving those aims by providing space for the dissemination of such information.”

3. China proposed to merge paragraphs 1 and 2 of article 5 to read as follows (see A/AC.261/L.97):

“Each State Party shall, in accordance with the fundamental principles of its domestic law, develop a national anti-corruption policy to ensure the nationwide coordination of the necessary anti-corruption measures.”

4. Algeria proposed that, in paragraph 1 of article 5, the bracketed phrase “that includes the participation of civil society” be replaced with the words “that reflects the concerns of civil society”, so that paragraph 1 would read as follows (see A/AC.261/L.93):

“1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop a national anti-corruption policy that reflects the concerns of civil society and the principles of rule of law, good governance, integrity, transparency and accountability.”

Algeria also proposed to specify that periodic evaluations of legal instruments and public practices should be conducted by States parties with a view to detecting their impact on dealing with corruption by amending paragraph 3 to read as follows:

“3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their impact on dealing with corruption and their vulnerability to corruption and criminal acts related to corruption.”

Rolling text (A/AC.261/3/Rev.2)

“*[Article 4 bis*
“*[...]*”

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

“*Article 5*¹²
“*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 enable [the participation

¹²The text of this article (A/AC.261/L.122) was submitted by Colombia and 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.

of civil society] [public involvement] [the participation of citizens] and reflect the principles of rule of law, [good governance] [good management of the public service] integrity, transparency and [accountability].¹³

“2. Each State Party shall endeavour to develop and evaluate projects and to establish and promote best practices aimed at the prevention of corruption [and criminal acts related to corruption].¹⁴

“3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their vulnerability to corruption¹⁵ [and criminal acts related to 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 shall include participation in international programmes and projects aimed at the prevention of corruption [and criminal acts related to corruption.]”

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

5. At its fifth session, the Ad Hoc Committee devoted informal consultations to chapter II of the draft convention on preventive measures with a view to facilitating its further deliberations and action on the provisions contained therein. The revised text of articles 4 bis and 5, as it emerged from those informal consultations (see document A/AC.261/L.196), was reproduced as below in the rolling text of the draft convention A/AC.261/3/Rev.4 in order to facilitate consideration of this provision by the Ad Hoc Committee at its sixth session.

Rolling text (A/AC.261/3/Rev.4)

“*Article 4 bis*
“[...]

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

“*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,

¹³During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations proposed that the second sentence of paragraph 1 be moved to the preamble of the draft convention.

¹⁴During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations proposed to reconsider the wording of paragraphs 2, 3 and 5 after consideration of the definition of “corruption”.

¹⁵During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations stated that they preferred the words “determining their adequacy to fight corruption” to the words “detecting their vulnerability to corruption”.

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.”

Sixth session: Vienna, 21 July-8 August 2003

United States of America (A/AC.261/L.210)

“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 [integrity, accountability and good governance].

“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 public practices 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.”

Rolling text (A/AC.261/3/Rev.5)

“Article 5

“Preventive anti-corruption policies and practices

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, 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 periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

“4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with 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.”

Notes by the Secretariat

6. At its sixth session, the Ad Hoc Committee provisionally approved the deletion of article 4 bis (see A/AC.261/22, para. 22).

7. At its sixth session, the Ad Hoc Committee provisionally approved article 5 of the draft convention (see A/AC.261/22, para. 22).

8. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved article 5 (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 5

Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, 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 periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with 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.

Article 6. Preventive anti-corruption body or bodies

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 5¹

“National integrity strategy and policies

“...

“4. Each State Party shall, in accordance with its domestic law, establish bodies suitable to fight corruption, such as:

“(a) A national anti-corruption agency to survey the national anti-corruption strategy referred to in paragraph 1 of this article;

“(b) A public service commission and ombudsman.

“5. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing and implementing a national integrity strategy. Such information shall contain the name and address of bodies referred to in paragraph 4 of this article.

“6. 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. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.

“Article 5 bis

“Specialized prevention structures

“1. States Parties shall consider the establishment of specialized bodies to prevent corruption that are capable of developing multidisciplinary methods to increase knowledge about corruption and to classify acts of corruption.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 31, paragraphs 1, 4, 6 and 7, of the Organized Crime Convention (with slight changes).

“2. States Parties shall grant the specialized bodies referred to in paragraph 1 of this article independence and the material means and specialized staff, as well as the training that such staff may require to perform their functions.”²

“3. States Parties shall consider establishing or appointing, within their public administration, a contact point or service to which any natural or legal person may apply in order to obtain advice or to report information concerning acts of corruption.”³

Rolling text (A/AC.261/3/Rev.1)

*“Article 5 bis^{4, 5}
“Anti-corruption bodies*

“1. Each State Party shall,⁶ in accordance with its domestic legal system, establish bodies such as:

“(a) A national anti-corruption⁷ agency to survey the national anti-corruption policy referred to in paragraph 1 of article 5; or

“(b) A public service commission or ombudsman; or

“(c) A specialized body to prevent corruption, capable of developing multidisciplinary methods to increase knowledge about corruption and to identify the different types of corruption.”^{8, 9}

“2. States Parties shall¹⁰ grant the specialized bodies referred to in paragraph 1 of this article independence¹¹ and the necessary material means and specialized staff, as well as the training that such staff may require to perform their functions.

“3. Each State Party shall consider establishing or appointing, within its public administration,¹² a contact point or service to which any natural or legal person may apply in order to obtain advice or to report information concerning acts of corruption.”

² Text taken from the proposal submitted by France (A/AC.261/IPM/10).

³ Text taken from the proposals submitted by Argentina (A/AC.261/IPM/20) and France (A/AC.261/IPM/10).

⁴ Proposal submitted by Austria, France and the Netherlands to replace the previous version of this article (A/AC.261/L.25) inserting, at the same time, relevant references contained in the previous version of article 5. The revised proposal 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.

⁵ One delegation suggested the deletion of this article.

⁶ At a later stage during the third session of the Ad Hoc Committee, the Czech Republic proposed the use of the words “may consider establishing” instead of the words “shall establish” (A/AC.261/L.98).

⁷ Mexico proposed the deletion of this word.

⁸ Some delegations proposed the deletion of subparagraphs (a)-(c) for being too specific (see, for example, the position of the Czech Republic regarding subparagraph (c), contained in document A/AC.261/L.98).

⁹ Colombia and Mexico proposed the insertion of an additional subparagraph, reading as follows:

“(d) Superior oversight bodies for the purpose of implementing mechanisms for preventing, detecting, punishing and eradicating corrupt practices.”

¹⁰ Mexico proposed the insertion of the words “endeavour to”.

¹¹ Some delegations questioned the meaning of the word “independence”, especially in relation to which authority such independence was envisaged.

¹² Mexico proposed the replacement of the words “public administration” with the words “public sector”.

*Third session: Vienna, 30 September-11 October 2002**Rolling text (A/AC.261/3/Rev.2)**“Article 5 bis¹³**“[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 [and detect] [and identify] [and contribute to the detection of] corruption by such means as:

“(a) Implementing the policies referred to in article 5 of this Convention;

“(b) Overseeing and coordinating the implementation of those policies, where appropriate;¹⁴

“[(c) Providing one or more contact points to which any natural or legal person may report [, including anonymously,] [with an appropriate guarantee of confidentiality] information concerning acts of corruption;]

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

“[(e) Establishing institutional bodies to set public auditing standards, placing special emphasis on performance auditing.]

“2. Each State Party shall grant the bodies referred to in paragraph 1 of this article [the necessary] [adequate] [the necessary operational] independence, in accordance with the fundamental principles of its legal system [, to enable them to carry out their functions effectively and free from any undue influence]. Each State Party shall endeavour to provide the necessary material means and specialized staff, as well as the training that such staff may require to carry out their functions.

“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 a policy on combating corruption.”

Notes by the Secretariat

1. Paragraph 3 of article 5 bis appeared in the previous rolling text of the draft Convention (A/AC.261/3/Rev.1) as paragraph 5 of article 5 (“[National] preventive anti-corruption policies”) (see under article 5 of the Convention).

¹³The text of this article (A/AC.261/L.104) was submitted by the United Kingdom and 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.

¹⁴During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was suggested that subparagraphs (a) and (b) should be merged.

Fifth session: Vienna, 10-21 March 2003*Notes by the Secretariat*

2. At its fifth session, the Ad Hoc Committee devoted informal consultations to chapter II of the draft convention on preventive measures with a view to facilitating its further deliberations and action on the provisions contained therein. The revised text of article 5 bis, as it emerged from those informal consultations (see document A/AC.261/L.196), was reproduced as below in the rolling text of the draft convention A/AC.261/3/Rev.4 in order to facilitate consideration of this provision by the Ad Hoc Committee at its sixth session.

Rolling text (A/AC.261/3/Rev.4)*“Article 5 bis¹⁵**“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.]¹⁶

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

“[Subparagraph (e) was deleted.]¹⁷

“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.”

¹⁵At 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) to read as follows: “Ensuring the supervision and review of the effective implementation of the Convention”.

¹⁶At 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).

¹⁷At 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).

Sixth session: Vienna, 21 July-8 August 2003

United States of America (A/AC.261/L.210)

*“Article 5 bis
“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; and

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

“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.”

Rolling text (A/AC.261/3/Rev.5)

*“Article 5 bis¹⁸
“Preventive anti-corruption body or bodies*

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption 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;

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

“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

¹⁸It was agreed that the *travaux préparatoires* would indicate that the body or bodies referred to in this article may be the same as those referred to in article 39.

resources 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.”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 5 bis of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 6

Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption 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;

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

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 resources 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.

C. Interpretative notes

The interpretative note on article 6 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 11) is as follows:

The body or bodies referred to in this article may be the same as those referred to in article 36.

Article 7. Public sector

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 6

“Public administration

“1. States Parties shall endeavour to adopt, maintain and strengthen:

“(a) Systems of government hiring of public officials that ensure openness, equity and efficiency;

“(b) Systems based on objective criteria, for open and merit-based hiring and promotion of public officials;

“(c) Systems for thorough screening of public officials for sensitive positions;

“(d) Systems establishing adequate salaries and harmonization of payments and facilitating efficient job rotation;

“(e) Education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions.¹

“2. States Parties shall take such measures as may be necessary to ensure that public officials and civil servants receive specialized, specific and appropriate training concerning the risks of corruption to which they may be exposed by virtue of their functions and the supervisory missions and investigations for which they are responsible.²

“3. States Parties shall consider, while respecting the basic principles of their domestic law, taking such measures as may be necessary to adopt and implement systems for declaring the income of persons who perform specific public functions and, where appropriate, to make such declarations public.³

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on excerpts from the Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials proposed at the Global Forum on Fighting Corruption: Safeguarding Integrity among Justice and Security Officials, held in Washington, D.C., from 24 to 26 February 1999.

² Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

*“Article 10⁴
“Funding of political parties*

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

“(a) To prevent conflicts of interest and the exercise of improper influence;

“(b) To preserve the integrity of democratic political structures and processes;

“(c) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and

“(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.

“2. Each State Party shall regulate the simultaneous holding of elective office and responsibilities in the private sector so as to prevent conflicts of interest.”

Rolling text (A/AC.261/3/Rev.1)

*“Article 6⁵
“Public sector*

“1. States Parties shall endeavour to adopt, maintain and strengthen:

“(a) Systems concerning government hiring and promoting of civil servants and, where appropriate, other non-elected public officials,⁶ that are efficient, transparent and objective, using criteria based on merit and equity. Those systems shall not prevent States Parties from maintaining or adopting specific legitimate measures for disadvantaged groups (affirmative action);⁷

“(b) Thorough procedures for the selection of public officials for positions that are especially vulnerable to corruption;

“(c) Systems for establishing adequate salaries and harmonization of payments and for facilitating efficient job rotation, where appropriate;

“(d) Education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions.^{8, 9, 10}

⁴ Text taken from the proposal admitted by Austria and the Netherlands (A/AC.261/IPM/4). (Paragraph 1 is based on paragraph 8 of the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption; and paragraph 2 is taken from conclusion 12 of the Third European Conference of Specialized Services in the Fight against Corruption, organized by the Council of Europe in Madrid from 28 to 30 October 1998.)

⁵ Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 6 (A/AC.261/L.19). The revised proposal 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.

⁶ It was agreed that the use of the terms in this article should be re-examined after the second reading of article 2 (Definitions [Use of terms]).

⁷ Proposal submitted by Austria, France, India and the Netherlands to replace subparagraphs (a) and (b) of the previous version of article 6 (A/AC.261/L.35).

⁸ Azerbaijan proposed that subparagraph (d) be revised to read as follows (A/AC.261/L.17):

“(d) Systems creating conditions for the integrity of public officials ...”

⁹ Peru proposed that paragraph 1 of this article read as follows (A/AC.261/L.28):

“2. States Parties shall take such measures as may be necessary, within the context of their legal system, to ensure that public officials and civil servants receive specialized, specific and appropriate training concerning the risks of corruption to which they may be exposed by virtue of their functions and the supervisory missions and investigations for which they are responsible.

“3. States Parties shall consider, while respecting the basic principles of their domestic law, taking such measures as may be necessary to adopt and implement systems for declaring¹¹ the assets or income of persons who perform specifically identified public functions and, where appropriate, to make such declarations public.¹²

*“Article 10¹³
“Funding of political parties¹⁴*

“1. Each State Party shall adopt, maintain and strengthen¹⁵ measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

“(a) To prevent conflicts of interest;¹⁶

“(b) To preserve the integrity of democratic political structures and processes;

“(c) To proscribe¹⁷ the use of funds acquired through illegal and corrupt practices to finance political parties; and¹⁸

“(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.¹⁹

“1. States Parties shall endeavour, in accordance with the principles of transparency, equity and efficiency, to adopt and strengthen systems of government hiring of public officials, as well as education and training programmes for such officials.”

¹⁰Some delegations were of the view that paragraph 1 was too detailed and could be shortened and formulated in a more general fashion.

¹¹Turkey proposed the insertion of the words “on a regular basis” in this paragraph.

¹²Algeria proposed that the text of article 6 read as follows (A/AC.261/L.27):

*“Article 6
“Public administration*

“1. Each State Party shall maintain and adopt systems of hiring and promoting public officials in accordance with rules based on legality and transparency.

“2. Each State Party shall prepare programmes, guides and manuals in the field of training and retraining with a view to improving performance of public functions, if necessary in cooperation with the competent bodies of the United Nations system and other multilateral organizations.

“3. Each State Party shall establish, in accordance with fundamental principles of its domestic law, modalities for the declaration of income.”

¹³Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 10 (A/AC.261/L.21). The revised proposal 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. Some delegations suggested the deletion of this article. One delegation, while supporting the goals behind this article, questioned whether negotiation of such a provision would be practical in the context of this convention, given the enormous variations in political systems.

¹⁴One delegation suggested that, if this article were included, it would necessitate a definition of “political party”.

¹⁵While 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”.

¹⁶Several delegations called for this concept to be better defined.

¹⁷Some delegations suggested replacing this word with the word “prohibit” or the words “eliminate the possibility of”.

¹⁸Azerbaijan proposed to amend subparagraphs (a)-(c) to read as follows (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”.

“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.”²⁰

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 6²¹

“Public sector

“1. Each State Party shall, where applicable and in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, maintaining,²² 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 of such individuals to other positions;

“(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, honorable 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.

“[2. The existence of the systems referred to in paragraph 1 of this article shall not prevent States Parties from maintaining or adopting specific legitimate measures for disadvantaged groups [affirmative action] [in order to ensure adequate representation of minorities].]

“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 by requiring [appropriate] public officials [, where appropriate,] [, where applicable,] to declare [, upon taking office

¹⁹Egypt proposed the addition of the words “and their sources” at the end of this subparagraph. Algeria suggested that this paragraph should require the declaration of all donations for the funding of political parties, for, if the requirement was only for those donations exceeding a specified limit, donors would split them in order to circumvent the rule.

²⁰Argentina 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.”

²¹The text of this article (A/AC.261/L.112) 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.

²²During the second reading of the draft text, at the third session of the Ad Hoc Committee, several delegations expressed the view that this was not the appropriate term and that another should be found during the third reading.

and periodically thereafter,] their financial interests²³ [, assets, debts] and sources of income and, where appropriate, [by making public the information contained in such declarations].^{24, 25}

*“[Article 6 bis
“Elected public officials”²⁶*

“In addition to the measures provided for in article 6,²⁷ each State Party shall also take appropriate legislative and administrative measures²⁸ consistent with the objectives of the present Convention to prescribe the qualifications and other criteria for the selection of public officials to be appointed to public office by a process of election.]”

*“Article 10²⁹
“Funding of political parties*

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

“(a) To prevent conflicts of interest;

“(b) To preserve the integrity of democratic political structures and processes;

“(c) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and

“(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.

“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.”

²³During the second reading of the draft text, at the third session of the Ad Hoc Committee, several delegations expressed the view that this term was not appropriate. Instead, these delegations proposed the use of the term “assets” or the term “patrimony”. One delegation proposed that this paragraph also make provision for the declaration of incompatibilities.

²⁴The declaration of financial interests and so forth could also be appropriate for elected public officials, so the limitation to “non-elected public officials” present in the text introduced by Botswana was not necessary. It is for the States parties themselves to decide for which public functions it is appropriate to make declarations of financial interests and so forth. Elected officials, such as members of parliament, local councillors and mayors, should not be excluded beforehand.

²⁵During the second reading of the draft text at the third session of the Ad Hoc Committee, Pakistan, Peru and the Philippines submitted a proposal for a new article 6 bis (see A/AC.261/L.126).

²⁶Proposed by Pakistan, Peru and the Philippines at the third session of the Ad Hoc Committee, pursuant to a request by the Chairman, after several delegations had expressed their support for it (A/AC.261/L.126). The proposed new article is intended to establish broadly the criteria for the selection of elected public officials. As article 6 (Public sector) deals only with government public officials, without this new article there would be an omission in the draft convention because in article 2 (Definitions [Use of terms]), the definition of “public official” includes “elected public official”. The proposal was not considered by the Ad Hoc Committee at its third session.

²⁷The parameters for the appointment of civil servants set out in article 6 would also be applicable, where appropriate, to elected public officials.

²⁸The criteria for the selection of an elected public official set out in this article were intentionally drafted in general terms in order to permit greater flexibility in the drafting of local election laws.

²⁹As mentioned above, this revised proposal submitted by Austria, France and the Netherlands to replace the previous version of article 10 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.

Fifth session: Vienna, 10-21 March 2003*Notes by the Secretariat*

1. At its fifth session, the Ad Hoc Committee devoted informal consultations to chapter II of the draft convention on preventive measures with a view to facilitating its further deliberations and action on the provisions contained therein. The revised text of articles 6 and 6 bis, as it emerged from those informal consultations (see document A/AC.261/L.196), was reproduced as below in the rolling text of the draft convention A/AC.261/3/Rev.4 in order to facilitate consideration of those provisions by the Ad Hoc Committee at its sixth session.

Rolling text (A/AC.261/3/Rev.4)

*“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;

“(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, honorable 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.³⁰

“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.

³⁰During 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.

*“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 10
“Funding of political parties*

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

“(a) To prevent conflicts of interest;

“(b) To preserve the integrity of democratic political structures and processes;

“(c) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and

“(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.

“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.”

Sixth session: Vienna, 21 July-8 August 2003

Notes by the Secretariat

2. At the sixth session of the Ad Hoc Committee, Australia submitted a proposal to amend the text of article 10, paragraph 1 (see document A/AC.261/L.213), to read as follows:

“Each State Party shall, in accordance with the fundamental principles of its domestic law, adopt, maintain and strengthen adequate and appropriate controls on the funding of electoral campaigns and political parties that serve:

“(a) To enshrine the concept of transparency, including, where appropriate, by requiring declarations concerning the origin of such funding; and

“(b) To prevent the use of funds acquired through illegal and corrupt practices.”

3. At the same session, a proposal was submitted by Argentina, Benin, Bolivia, Brazil, Chile, Colombia, Egypt, Finland, France, Germany, Guatemala, Nigeria, Peru, Portugal and Sweden (see document A/AC.261/L.215) to replace the text of article 10 contained in document A/AC.261/3/Rev.4 with the following:

“Each State Party shall, in accordance with the fundamental principles of its domestic law, adopt, maintain and strengthen measures or regulations to enhance transparency in the funding of political parties and electoral campaigns by such means as requiring declarations of:

“(a) Donations exceeding a specified limit and their origin;

“(b) Property used for electoral purposes.”

4. A working group established to work on article 10 of the draft convention made efforts to achieve a consensus text and, in that context, agreed at the sixth session of the Ad Hoc Committee on the content of a provision covering the funding of candidatures for elected public office and, where applicable, the funding of political parties, as well as the placement of such a provision, but was not able to agree on whether the provision should be mandatory or non-mandatory. In place of article 10, the following language would be inserted into article 6 (Public sector): “to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. It was further agreed that this language was closely related to the subject matter of paragraph 2 of article 6 (prescription of criteria concerning candidature for and election to public office), and, if the Ad Hoc Committee were to decide that the provision should be non-mandatory, could be inserted into that paragraph after the phrase “fundamental principles of its domestic law”, with no alteration to the substance of the existing text of paragraph 2. As paragraph 2 begins with the words “Each State Party shall consider”, the provision on transparency in funding would have the same discretionary effect as the prescription of criteria concerning candidature for and election to public office. The working group also noted that if the Ad Hoc Committee were to decide that the provision should be mandatory, the language would be inserted into a new paragraph modelled on paragraph 2. The final decision of the Ad Hoc Committee was to insert a new paragraph modelled on paragraph 2 and using non-mandatory language.

Rolling text (A/AC.261/3/Rev.5)

“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;

“(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 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.³¹

“2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

“3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

“4. 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.”

Notes by the Secretariat

5. Article 6 bis was merged with article 6.

6. At its sixth session, the Ad Hoc Committee provisionally approved the deletion of article 10 of the draft convention (see A/AC.261/22, para. 22).

7. Following the decision of the Ad Hoc Committee to delete article 10, the representatives of Benin, Burkina Faso, Cameroon and Senegal expressed their wish that the report of the Ad Hoc Committee reflect their preference for a separate binding article on the financing of political parties; however, because of their willingness to accommodate the concerns of other delegations and to ensure the successful finalization of the draft convention, they had felt compelled to join the consensus on the deletion of article 10 and the incorporation of a new paragraph in article 6.

8. At its sixth session, the Ad Hoc Committee provisionally approved article 6 of the draft convention (see A/AC.261/22, para. 22).

9. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

³¹ It was agreed that the *travaux préparatoires* would indicate that 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 (see footnote 30 above).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 7
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;

(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 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. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. 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.

C. Interpretative notes

The interpretative note on article 7 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 12) is as follows:

Paragraph 1

The existence of the systems referred to in paragraph 1 of article 7 shall not prevent States parties from maintaining or adopting specific measures for disadvantaged groups.

Article 8. Codes of conduct for public officials

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 7

“Code of conduct for public officials

“1. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public honesty, the proper exercise of responsibilities and the development of integrity.¹

“Option 1

“1. Each State Party shall agree to apply within its own institutional and legal system standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.

“2. States Parties shall endeavour to incorporate into those standards the elements mentioned in the International Code of Conduct for Public Officials that appears in the annex to this Convention.

“3. In addition, each State Party shall also, where appropriate, establish measures and systems to require public officials:

“(a) To report to appropriate authorities acts of corruption committed in the performance of public functions;

“(b) To make a declaration to appropriate authorities with respect to any gift or benefit obtained in the course of their duties and functions as public officials and any other employment or investment that may constitute a conflict of interest with respect to their functions as public officials.²

“3 bis. Each State Party shall take such measures as may be necessary to ensure that no prejudice is caused to or sanction taken against public officials who report to the competent authorities, in good faith and on reasonable grounds, any

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). France proposed that this paragraph precede any other text in this article.

² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.

“4. States Parties shall create, maintain and strengthen mechanisms to enforce the standards established in accordance with paragraphs 1 and 3 of this article. In this respect, States Parties shall consider adopting where appropriate and in accordance with the fundamental principles of their domestic law, disciplinary measures against public officials who violate those standards.

“5. For the purposes of implementing the provisions of this article, States Parties shall take account of the relevant initiatives of regional, interregional and multilateral organizations.³

“Option 2⁴

“1. States Parties shall, through educational techniques for promoting knowledge, foster the exploration and assimilation of ethical values and conduct, while also stimulating the acquisition of skills and attitudes conducive to observance of the principles underlying this Convention.

“2. States Parties shall initiate human skill development processes for improving their organizational culture.

“3. With the cooperation of the relevant United Nations entities and other multilateral bodies, guides and manuals shall be drawn up to provide models enabling States Parties to further internal processes of inculcating values among public officials and to devise educational strategies for the exploration and assimilation of values.

“4. States Parties shall set up and operate virtual ethics advice centres via the Internet and interactively to provide a service for the public and for public officials with queries or dilemmas of an ethical or legal nature, such centres to act as a support for efforts to strengthen moral values in society and to introduce tools into public administration that promote transparency.

“Option 3⁵

“1. States Parties undertake to adopt codes of conduct for the correct, honourable and proper behaviour of public officials.

“2. Such codes shall include rules:

“(a) Requiring the reporting to the appropriate authorities of acts of corruption in the discharge of public functions by persons having a knowledge thereof in the performance of their duties;

“(b) Preventing the improper use of public monies, property, services or information that is acquired in the performance or as a result of their official duties for activities not related to their official work;

³Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10) and based on article III, paragraphs 1 and 2, of the Inter-American Convention against Corruption (with changes).

⁴Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁵Text taken from the proposal submitted by Argentina (A/AC.261/IPM/20).

“(c) Prohibiting them from soliciting or receiving, directly or indirectly, for themselves or for their close relatives any gifts or other favours or benefits that may influence the impartial exercise of their functions.”

Rolling text (A/AC.261/3/Rev.1)

“*Article 7*^{6, 7}

“*Code of conduct for public officials*

“1. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public⁸ honesty, the proper exercise of responsibilities and the development of integrity of public officials.⁹

“2. In particular, each State Party shall agree to apply, within its own institutional¹⁰ and legal systems, standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest¹¹ and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.¹²

“3. States Parties shall endeavour¹³ to incorporate into those standards¹⁴ the elements set out in the International Code of Conduct for Public Officials that appears in the annex to General Assembly resolution 51/59 of 12 December 1996.¹⁵

“4. Each State Party shall also establish measures and systems to require public officials to report to appropriate authorities acts of corruption committed in the performance of public functions.¹⁶

⁶Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 7 (A/AC.261/L.20). The revised proposal 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.

⁷Algeria proposed that the text of article 7 read as follows (A/AC.261/L.30):

“*Article 7*

“*Code of conduct for public officials*

“1. Each State Party shall apply, in accordance with its domestic law, in the form of codes of ethics and conduct, such measures as are necessary to prevent acts of corruption and ensure the conservation and effective use of public resources entrusted to public officials in the performance of their functions.

“2. The codes of ethics and conduct shall, where appropriate, be based on the relevant initiatives of regional, interregional and multilateral organizations.”

⁸Several delegations suggested the deletion of this word.

⁹Mexico proposed the addition of the following text (A/AC.261/L.33): “For this purpose, the guidelines shall take account of instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.”

¹⁰One delegation suggested the replacement of this word with the word “administrative”.

¹¹Some delegations suggested that there might be a need to define this term.

¹²Some delegations proposed the deletion of the second sentence of this paragraph, on the grounds that it was too detailed.

¹³One delegation suggested the insertion of the words “where appropriate”.

¹⁴One delegation suggested the insertion of the words “at least” here.

¹⁵Most delegations saw no need to have the International Code of Conduct as an annex to the convention. While some delegations were of the view that the paragraph could be deleted, many others wished to retain the references to the International Code of Conduct and General Assembly resolution 51/59. Some delegations, however, questioned whether those references would be appropriate, as there were potential implications arising from the different juridical value of a resolution and a convention.

¹⁶Some delegations wished this paragraph to be expanded in order to cover business activity. Other delegations suggested that this paragraph be merged with paragraph 5.

“5. Each State Party shall take such measures as may be necessary to ensure that no prejudice is caused to or sanction taken against public officials for the mere fact that they have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.¹⁷

“6. In addition, each State Party shall, where appropriate, establish measures and systems to require public officials to make declarations to the appropriate authorities regarding:

“(a) Employment or investment that may constitute a conflict of interest with respect to their functions as public officials;

“(b) Gifts or benefits obtained in the course of their duties and functions as public officials.^{18, 19}

“7. In order to enforce any standards established in accordance with paragraphs 2, 4 and 6 of this article, States Parties shall consider adopting, in accordance with fundamental principles of their domestic law, disciplinary²⁰ measures against public officials who violate those standards.²¹

“8. For the purposes of implementing the provisions of this article, States Parties shall take account of the relevant initiatives of regional, interregional and multilateral organizations.”^{22, 23}

Third session: Vienna, 30 September-11 October 2002

Colombia (A/AC.261/L.94)

“Article 7

“Code of conduct for public officials

“1. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for honesty, the proper exercise of responsibilities, the development of integrity of public officials and loyalty to the public administration.

¹⁷Some delegations expressed the view that this paragraph should be moved to the article on protection of witnesses. Others wished this paragraph to be redrafted and merged with paragraph 4.

¹⁸Azerbaijan proposed the insertion at the end of this subparagraph of the words “exceeding the limits established by domestic law”.

¹⁹Mexico proposed to replace paragraph 6 with the following text (A/AC.261/L.33):

“6. Each State Party shall establish such measures as may be necessary:

“(a) To ensure that its public officials declare to the appropriate authority any employment or investment that may constitute a conflict of interest and to prevent such undertakings;

“(b) To prevent or limit the receipt of gifts or benefits by public officials by virtue of their function.”

²⁰Some delegations proposed to replace the word “disciplinary” with the word “appropriate” or “relevant”.

²¹Brazil proposed to add the following paragraph (A/AC.261/L.32):

“Each State Party shall also, where appropriate, establish measures and systems requiring each public official not to protect or defend any interest in public institutions after being dismissed from his or her functions, for a period to be determined by the State Party and to be proportionate to the level of office held by the public official at the time of dismissal.”

²²At the first session of the Ad Hoc Committee, most delegations proposed the deletion of this paragraph.

²³Argentina proposed the inclusion of a new article entitled “Conflicts of interest” after this article.

“2. In particular, each State Party shall agree to apply, within its own institutional and legal systems, standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.

“3. States Parties shall endeavour to incorporate into those standards the following elements:²⁴ efficiency and effectiveness in the performance of duties; appointments for public duties on the basis of merit; compliance with the provisions established to reduce or eliminate conflicts of interest; responsibility for decisions and accountability; transparency; respect for confidentiality; impartial performance of functions and duties without impairment of public confidence through political or other activities.”

Rolling text (A/AC.261/3/Rev.2)

“Article 7²⁵

“Codes of conduct for public officials

“[1. In order to [foster a culture of rejection of corruption] [fight corruption], each State Party shall promote ethical behaviour and the development of integrity among its public officials [by encouraging honesty and responsibility].]²⁶

“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. [Those codes or standards shall be intended to prevent conflicts of interest and to promote honesty and responsibility in the performance of public functions.]²⁷

“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 account 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.

²⁴Text based on the International Code of Conduct for Public Officials.

²⁵The text of this article (A/AC.261/L.115) 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 working group was coordinated by Canada. 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.

²⁶The Czech Republic proposed to incorporate option 1 of article 36 of the draft convention (Measures against corruption) into article 7 as its first paragraph and renumber the following paragraphs accordingly (see A/AC.261/L.98). According to that proposal, the new paragraph would read as follows:

“1. Each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.”

²⁷During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was suggested that paragraph 1 (d) of article 6, dealing with education and training programmes for public officials, should make specific reference to education in relation to codes and standards of conduct, perhaps by adding the following sentence: “Such programmes should make reference to codes or standards of conduct in applicable areas.” Algeria further proposed to replace the words “prevent conflicts of interest” with the words “prevent lapses in the conduct and integrity of public officials” (see A/AC.261/L.93).

“4. Each State Party shall also consider establishing measures and systems to require public officials to report to appropriate authorities acts of corruption committed in the performance of public functions that come to their notice.

“[5. Each State Party shall take such measures as may be appropriate to ensure that no prejudice is caused to or sanction taken against public officials for the mere fact that they have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.]²⁸

“6. In addition, each State Party shall, where appropriate, establish measures and systems to require public officials to make declarations to appropriate authorities regarding:

“[(a) Employment, investments [or responsibilities]²⁹ that may constitute [a conflict of interest] with respect to their functions as public officials;]³⁰

“(b) [Substantial] gifts or benefits that may constitute [a conflict of interest] with respect to their functions as public officials.

“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.”³¹

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee devoted informal consultations to chapter II of the draft convention on preventive measures with a view to facilitating its further deliberations and action on the provisions contained therein. The revised text of article 7, as it emerged from those informal consultations (see document A/AC.261/L.196), was reproduced as below in the rolling text of the draft convention A/AC.261/3/Rev.4 in order to facilitate consideration of this provision by the Ad Hoc Committee at its sixth session.

²⁸During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was agreed that paragraph 5 was important, but delegations held the view that it did not, in fact, address codes of conduct. It was proposed that it be moved to another article, either article 6 (Public sector), 36 (Measures against corruption) or 43 (Protection of witnesses and victims). Some delegations also proposed that paragraph 5, together with paragraph 4, be moved to a separate, two-paragraph article, numbered 7 bis; other delegations, however, held the opinion that they should not be so closely linked.

²⁹The words “or responsibilities” are included to address the issue previously addressed in paragraph 2 of article 10, which is to be moved. They appear in square brackets as it has not been decided to which article they are to be moved. Some delegations held the view that the word “responsibilities” should be further elucidated.

³⁰The Libyan Arab Jamahiriya proposed to replace the words “that may constitute [a conflict of interests] with respect to their functions” with the words “that may conflict with their functions or that they are forbidden to perform as public officials” (see A/AC.261/L.178).

³¹Turkey suggested that a new paragraph should be added at the end of the article to read as follows (see A/AC.261/L.89): “Each State Party shall adopt such legislative or other measures as may be necessary to ensure that all discretionary powers given to public officials are exercised in accordance with objective criteria, in order to prevent the misuse of such discretionary powers.”

Rolling text (A/AC.261/3/Rev.4)*“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,³² 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.

“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.

“...

“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.³³

“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.”

Notes by the Secretariat

2. Former paragraph 5 contained in rolling text A/AC.261/3/Rev.2 was deleted and taken up under article 43 (Protection of witnesses and victims). It finally formed the basis for the formulation of the text of a new article 43 bis (Protection of reporting persons) (see also under article 33 of the Convention).

³²One 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.

³³One delegation could not agree with the wording of paragraph 6 and reserved the right to comment on this provision in the plenary.

Sixth session: Vienna, 21 July-8 August 2003***Rolling text (A/AC.261/3/Rev.5)****“Article 7**“Codes of conduct for public officials*

“1. In order to fight corruption, each State Party shall promote, inter alia, integrity, 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, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

“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 authorities, when such acts come to their notice in the performance of their functions.

“5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

“6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 7 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 8

Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, 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, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

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 authorities, when such acts come to their notice in the performance of their functions.

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

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9. Public procurement and management of public finances

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 8¹

“Public procurement and public financial management

“1. Each State Party shall take the necessary steps to establish procurement rules based on transparency, openness and competition. Such rules shall include, inter alia:

“(a) Public distribution of information on both tenders and awarded contracts;

“(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values; and

“(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.

“2. Each State Party shall take all relevant measures to ensure:

“(a) The existence of and compliance with transparent procedures for the management of public finances, including the preparation and approval of the national budget;

“(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances [in particular by higher administrative and financial oversight bodies]; and

“(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 take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption.

¹ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“4. Each State Party shall take such measures as may be necessary, within the framework of its domestic law on public accounting, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

“5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions or falsifications in respect of the books, records, accounts and financial statements of administrations and public entities.

“6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations takes into consideration the consequences of acts of corruption committed by public officials.”

Rolling text (A/AC.261/3/Rev.1)

“Article 8

“Public procurement and public financial management

“1. Each State Party shall take the necessary steps to establish procurement rules² based on transparency, openness and competition. Such rules shall include, *inter alia*:³

“(a) Public distribution of information on both tenders and awarded contracts;

“(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values;⁴ and

“(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.^{5, 6}

“1 bis. States Parties shall endeavour to adopt the necessary legislative measures to introduce uniform legislation, rules and manuals for all the procurement agencies in their respective jurisdictions and those regulations shall be prepared with due regard to recognized international texts in the area.⁷

² 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 foresee exceptions for the procurement standards found in this article. For example, those delegations mentioned the need for flexibility in procurements involving *de minimis* amounts.

³ Several delegations suggested a more general drafting of this paragraph in order to eliminate unnecessary detail and to instil flexibility, possibly with the insertion of a clause on consistency with domestic law.

⁴ Mexico proposed to replace subparagraph (b) with the following text (A/AC.261/L.33):

“(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values, to which civil society shall have access;”

⁵ Mexico proposed to add a new subparagraph (d) as follows (A/AC.261/L.33):

“(d) Limitation of the discretionary authority of public officials with respect to the granting of administrative authorizations and resolutions.”

⁶ South Africa proposed to add the following subparagraphs after subparagraph (c) (A/AC.261/L.23):

“(d) Security clearance of procurement personnel;

“(e) Screening of individuals and businesses to which contracts are awarded;

“(f) Declaration of financial interests of employees involved in procurement.”

⁷ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

“2. Each State Party shall take all relevant measures to ensure:

“(a) The existence of and compliance with transparent procedures for the management of public finances, including the preparation and approval of the national budget;⁸

“(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances [in particular by higher administrative and financial oversight bodies]; and

“(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 take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption.⁹

“4. Each State Party shall take such measures as may be necessary, within the framework of its domestic law on public accounting, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

“5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions or falsifications in respect of the books, records, accounts and financial statements of administrations and public entities.¹⁰

“6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations¹¹ takes into consideration the consequences of acts of corruption committed by public officials.”^{12, 13}

⁸ South Africa proposed to amend paragraph 2 (a) to read as follows (A/AC.261/L.23):

“2. Each State Party shall take all relevant measures to 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) A system of internal audit under the control and direction of an audit committee within public institutions;”

⁹ Mexico proposed to replace paragraph 3 with the following text (A/AC.261/L.33):

“3. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption, as well as mechanisms to provide effective and timely assistance to taxpayers regarding steps and measures to be taken in their dealings with the fiscal authorities.”

¹⁰ Several delegations suggested that this paragraph should be moved to the chapter on criminalization.

¹¹ Mexico proposed to replace the words “public administrations” with the words “the public sector”.

¹² Many delegations were of the view that this paragraph required redrafting to make it more precise.

¹³ Peru proposed that article 8 read as follows (A/AC.261/L.38):

“Article 8

“Public procurement and public financial management

“1. Each State Party shall, in conformity with the principles of transparency and competency, establish appropriate and effective rules on public procurement and public financial management.

“2. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of public entities with a view to preventing corruption.

“3. Each State Party shall take such measures as may be necessary, within the framework of its domestic law, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 8¹⁴

“Public procurement and public financial management¹⁵

“4. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations takes into consideration the consequences of acts of corruption committed by public officials and shall also provide effective, proportionate and dissuasive civil, administrative or criminal penalties in the case of failure to comply with the requirements established in accordance with paragraph 3 of this article.”

¹⁴ The words “or responsibilities” are included to address the issue previously addressed in paragraph 2 of article 10, which is to be moved. They appear in square brackets as it has not been decided to which article they are to be moved. Some delegations held the view that the word “responsibilities” should be further elucidated.

¹⁵ 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.

The European Commission, on behalf of the States Members of the United Nations that are members of the European Union, submitted a proposal aiming at replacing the initial proposals on paragraph 1 submitted earlier by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10). According to that proposal (see A/AC.261/L.103) paragraphs 1 and 1 bis, as contained in rolling text A/AC.261/3/Rev.1, should be amended to read as follows:

“1. Each State Party shall take the necessary steps to establish procurement rules with appropriate threshold values based on transparency, openness and competition. 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 potential tenderers;

“(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 independent system of appeal to ensure legal recourse and remedies in the event that the rules established pursuant to this paragraph are not followed.

“1 bis. States Parties shall endeavour to adopt the necessary legislative measures to introduce uniform legislation, rules and manuals for all the procurement agencies in their respective jurisdictions. Those legislative measures shall be prepared with due regard to recognized international texts in the area and published.”

South Africa supported the amendments proposed by the European Commission and proposed additional amendments so that article should read as follows (see A/AC.261/L.113):

“1. Each State Party shall take the necessary steps to establish procurement rules with appropriate threshold values based on transparency, openness and competition. 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 potential tenderers;

“(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 independent 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.

“1 bis. States Parties shall adopt the necessary measures to introduce uniform legislation and rules for procurement agencies within their respective jurisdictions. Those measures should be prepared and published with due regard to recognized international texts in that area.

“2. Each State Party shall take all relevant measures to 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) A system of internal audit under the control and direction of an audit committee 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 take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities 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 establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

“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;

“(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.

“6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of the public sector is strengthened in order to minimize acts of corruption.”
Argentina proposed the addition of a new subparagraph in paragraph 1 to read as follows (see A/AC.261/L.107):

“Mechanisms allowing the full involvement of interested parties and civil society at each stage in the formulation of instructions for bidders with the aim of achieving greater efficiency in the management of public procurement.”

Turkey proposed to amend the title of article 8 to read “Public procurement, public financial management and financial control” and further proposed to amend subparagraph 2 (b) to read as follows (see A/AC.261/L.109):

“(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances [in particular by higher administrative and financial oversight bodies] and the establishment of ex ante and ex post mechanisms for internal financial control and audit;”

Yemen submitted a proposal on article 8 at the third session of the Ad Hoc Committee (A/AC.261/L.108) as follows:

a. The delegation of Yemen proposes adding the words “public sales” to the title of article 8, to read “Public procurement, public sales and public financial management”.

b. The delegation of Yemen supports the proposal submitted by Peru for article 8 (A/AC.261/L.38) and proposes adding the following words after “procurement” in paragraph 1 of that proposal: “and sales, including the preparation and adoption of public budgets, as well as the final accounts reflecting the results of implementing those budgets”.

c. It is proposed to move paragraph 4 of the proposal submitted by Peru to chapter III, entitled “Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement”. The amended article would thus consist of three paragraphs and would read as follows:

“Article 8

“Public procurement, public sales and public financial management

“1. Each State Party shall, in conformity with the principles of transparency and competency, establish appropriate and effective rules on public procurement and sales, including the preparation and adoption of public budgets, as well as the final accounts reflecting the results of implementing those budgets.

“2. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of public entities with a view to preventing corruption.

“3. Each State Party shall take such measures as may be necessary, within the framework of its domestic law, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.”

“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 book-keeping 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.”

Notes by the Secretariat

1. 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.

Sixth session: Vienna, 21 July-8 August 2003

Notes by the Secretariat

2. At the sixth session of the Ad Hoc Committee, Morocco proposed the following amendments or additions to certain provisions of article 8 of the draft convention (see A/AC.261/21):

Paragraph 1

It would be preferable to apply the same rules to public service subcontracting agreements (such as concessions, leasing, contracting-out of sanitation services, water and electricity distribution, urban transport and motorway management). The first sentence of the paragraph could thus be amended to read as follows:

“1. Each State Party shall take the necessary steps to establish rules for public procurement and public service subcontracting agreements, based on transparency, openness and competition.”

The rest of the paragraph would remain unchanged. Exceptions to the rules contained in paragraph 1, as proposed by some delegations in cases of public procurement involving small amounts, should also apply to certain bodies involved in national defence or public security.

Paragraph 2

The scrutiny of public finances covered in subparagraph (b) should be undertaken not only by higher administrative and financial oversight bodies but also by independent judicial bodies. The subparagraph could thus be amended to read as follows:

“(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances, in particular by higher administrative and financial oversight bodies and by specialized courts;”

Paragraph 5

The penalties provided for under paragraph 5, to which the perpetrators of the offences listed in paragraph 4 are liable, should be extended to persons outside the administration (such as suppliers, contractors and service providers) who have participated in any way in the commission of acts constituting such offences. It should also be specified that such penalties could be of a financial nature, involving either the return of misappropriated money, for example, or the payment to the public body concerned of damages in an amount set by the competent courts. The following sentence could thus be added at the end of paragraph 5:

“These penalties, which may take a financial form, may also be imposed on any person outside the administration or public body who may have taken part in the commission of acts constituting the offences listed in paragraph 4 above.”

Rolling text (A/AC.261/3/Rev.5)*“Article 8**“Public procurement and management of public finances*

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

“(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

“(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

“(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

“(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

“(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.¹⁶

¹⁶ It was agreed that the *travaux préparatoires* would indicate that nothing in paragraph 1 shall be construed as preventing any State party from taking any action or not disclosing any information that it considers necessary for the protection of its essential interests related to national security.

“2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

“(a) Procedures for the adoption of the national budget;

“(b) Timely reporting on revenue and expenditure;

“(c) A system of accounting and auditing standards and related oversight;¹⁷

“(d) Effective and efficient systems of risk management and internal control; and

“(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

“3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.”¹⁸

Notes by the Secretariat

3. At the sixth session of the Ad Hoc Committee, Canada proposed to add a new paragraph at the end of article 8 to read as follows (see A/AC.261/L.236):

“[...] State Party shall take appropriate measures that aim to ensure that the processes and procedures employed in the privatization of state-owned property and in the granting of public service concessions are transparent and fair to all potential acquirers in the context of the property or activity being privatized.”

In the same context, Brazil and Sri Lanka proposed that the text of the additional paragraph be as follows (see A/AC.261/L.238):

“[...] Each State Party shall take appropriate measures to ensure that the privatization of state-owned or municipal property is subject to procedures that are based on transparency, competition and objective criteria in decision-making.”

4. At the sixth session of the Ad Hoc Committee, the United States proposed the following text for article 8 (see A/AC.261/L.210):

“Article 8

“Public procurement and public financial management

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish procurement rules that are

¹⁷ Turkey proposed the following language (see A/AC.261/L.208): “[The existence of] a system of internal audit under the control and direction of audit committees within public institutions, that would operate in accordance with pre-established auditing standards placing special emphasis on performance auditing.”

¹⁸ The text of this paragraph is the result of the work undertaken by an informal open-ended working group coordinated by Mexico. The proposed text was submitted in consultation with France, India and the United States at the request of the Chairman (see A/AC.261/L.241).

effective in preventing corruption. Such rules, which may take into account appropriate threshold values in their application, shall address, inter alia:

“(a) The arrangements for public distribution of specific procurements, including information on invitations to tender and the award of contracts, allowing potential tenderers sufficient time to prepare and submit a responsive tender;

“(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

“(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules;

“(d) The arrangements for an effective system of domestic review in the event that the rules established pursuant to this paragraph are not followed;

“(e) The regulation of matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

“2. Each State Party shall, in accordance with the fundamental principles of its legal system, take relevant measures to ensure adequate transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

“(a) The preparation and approval of the national budget;

“(b) The timeliness of reporting on revenue and expenditure;

“(c) Accounting, audit control and related oversight;

“(d) Powers of remedy in the case of failure to comply with the requirements established in this paragraph.”

5. At its sixth session, the Ad Hoc Committee provisionally approved article 8 of the draft convention (see A/AC.261/22, para. 22). Former paragraphs 4 and 5 in rolling text A/AC.261/3/Rev.2 were considered in relation to article 11 of the draft convention (see under article 12 of the Convention).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 9

Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control;
and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

C. Interpretative notes

The interpretative note on article 9 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 13) is as follows:

Paragraph 1

Nothing in paragraph 1 shall be construed as preventing any State party from taking any action or not disclosing any information that it considers necessary for the protection of its essential interests related to national security.

Article 10. Public reporting

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 9¹
“Public reporting*

“1. States Parties shall take such measures as may be necessary to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring, as regards access to information, as much transparency as is consistent with the need to achieve effectiveness.

“2. Each State Party shall take the necessary measures to establish appropriate systems for public reporting. Those systems may include:

- “(a) Reporting requirements for government departments and agencies;
- “(b) Publication of annual government reports.”

Rolling text (A/AC.261/3/Rev.1)

*“Article 9
“Public reporting*

“1. States Parties shall take such measures as may be necessary to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring, as regards access to information, as much transparency as is consistent with the need to achieve effectiveness.²

“2. Each State Party shall take the necessary measures to establish appropriate systems for public reporting.³ Those systems may include:

- “(a) Reporting requirements for government departments and agencies;

¹ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Some delegations suggested that this paragraph would require refinement to make it more precise.

³ Some delegations suggested the deletion of the rest of the paragraph in order to eliminate unnecessary detail. Others maintained that the inclusion of examples was essential to provide guidance for the application of the article.

“(b) Publication of annual government reports.”⁴

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 9⁵ “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.”

Notes by the Secretariat

1. Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), Germany proposed to add a new article entitled “Exchange of personal information” at the end of this chapter of the draft convention (A/AC.261/L.168). The text of the proposed article was as follows:

“Article [...] “Exchange of personal information

“The collection and use of personal data under this Convention shall be subject to the following provisions with regard to the domestic law of each State Party:

“(a) The receiving authority of a State Party shall use the data only for the purposes specified in this Convention and subject to the conditions determined by the transmitting authority of another State Party. In addition, the data may be used

⁴ Mexico proposed the addition of a new subparagraph to read as follows (A/AC.261/L.34):

“(c) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them.”

⁵ 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.

to prevent and prosecute criminal offences of considerable significance, as well as to ward off substantial danger to public security. The data shall not be retransmitted to States not parties to this Convention;

“(b) Upon request, the receiving authority of a State Party shall inform the transmitting authority of the other State Party of the use made of the data transmitted and the results achieved therefrom. Where the data are used in accordance with subparagraph (a) of this article, such information shall be furnished immediately and without prior request. The transmitting authority and the receiving authority shall keep a record of the transmission and the receipt of personal data;

“(c) The transmitting authority and the receiving authority of the States Parties concerned shall pay attention to the accuracy of the data and to ensuring their security. When collecting and using the data, they shall be bound by the principles of relevance and reasonableness and shall comply with any provisions under domestic law prohibiting transmission, as well as pay due regard to any interests of the data subject that may require protection. Inaccurate data or data that should not have been collected or processed or data that are no longer needed for the purpose for which they were transmitted shall be rectified or deleted immediately. When transmitting the data, the transmitting authority shall indicate the periods specified under its domestic law after which such data must be deleted;

“(d) Upon request, the data subject shall be informed about the data held with respect to his or her person as well as about the purpose for which they are intended to be used. He or she shall have the right to demand deletion of inaccurate data or data that should not have been collected or used. The domestic law of the State Party in the territory of which information is requested shall govern the right to information and to deletion of data. Information may be refused if the interest of the State not to supply such information outweighs the interest of the person requesting it.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 9

“Public reporting

“Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

“(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for

the protection of privacy and personal data, on decisions and legal acts that concern members of the public;⁶

“(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

“(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 9 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 10 Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

⁶ At the sixth session of the Ad Hoc Committee, Germany indicated its intention to withdraw the proposal on the addition of a new article on “Exchange of personal information” and proposed that a note for the *travaux préparatoires* be inserted here instead. The note would read as follows:

“The *travaux préparatoires* will indicate that, regarding the protection of personal information, the use of which is addressed in this Convention, States Parties should be inspired by principles laid down in the guidelines for the regulation of computerized personal data files, adopted by the General Assembly in its resolution 45/95 of 14 December 1990.”

The Ad Hoc Committee decided to consider this proposal at its seventh session.

C. Interpretative notes

The interpretative note on article 10 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 14) is as follows:

Subparagraph (a)

Regarding the protection of personal information, the use of which is addressed in the convention, States parties may be inspired by principles laid down in the guidelines for the regulation of computerized personal data files adopted by the General Assembly in its resolution 45/95 of 14 December 1990.

Article 11. Measures relating to the judiciary and prosecution services

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling texts (A/AC.261/3/Rev.1)

“Article 9 bis¹

“Measures with respect to the judiciary

“As part of its anti-corruption policy, as referred to in article [...] [[National] preventive anti-corruption policies], and bearing in mind the crucial role of the judiciary in the fight against corruption, each State Party shall take, in accordance with fundamental principles of its domestic law, appropriate measures to reduce any opportunities for judicial corruption, in full observance of judicial independence.²

“Such measures may include:

“(a) Measures³ to counter risk of conflict of interest;

“(b) Measures for ensuring standards of conduct for members of the judiciary;

“(c) Measures for dealing with complaints with respect to the conduct of the judiciary and providing for appropriate sanctions;

“(d) Transparent and fair procedures for fixing remuneration and ensuring stability of tenure.”^{4, 5}

¹ Revised proposal submitted by the United Kingdom (A/AC.261/L.45) following consultations during the first session of the Ad Hoc Committee after the first reading of that delegation’s original proposal (A/AC.261/L.2). Some delegations indicated that they were not entirely comfortable with a separate article on the judiciary. One delegation expressed the concern that subparagraphs (a)-(c) were too detailed.

² Some delegations suggested amending this phrase to read “without prejudice to judicial independence”. One delegation proposed the phrase “with full observance of the independence of the judiciary”.

³ It was suggested that this word should be replaced with the words “rules and procedures” or “measures and procedures”.

⁴ Slovenia proposed to add the following paragraph to this article (A/AC.261/L.36):

“Measures adopted pursuant to paragraph 1 of this article shall be by analogy introduced and applied within the public or state prosecution service in those States Parties where it enjoys similar independence as the judicial service.”

⁵ Pakistan proposed replacing this article with the following text:

“In view of the gravity of the consequences of corruption in the judiciary, each State Party shall apply the provisions of articles 6 and 7 of this Convention more vigorously in the case of the judiciary, without however compromising its independence and without interference of other organs of the State in the affairs of the judiciary.”

Third session: Vienna, 30 September-11 October 2002**Rolling text (A/AC.261/3/Rev.2)***“Article 9 bis⁶**“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 may⁷ by analogy be introduced and applied within the public or state prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.”

Notes by the Secretariat

1. 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) to read as follows:

*“Article 9 bis**“Measures within the judicial and prosecution services*

“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 prevent opportunities for corruption in the judiciary and to reinforce judicial integrity. 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 may be introduced and applied within the public or state prosecution service in those States Parties where it enjoys independence the same or similar to that of the judicial service.”

⁶ 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 informal working group was coordinated by the United Kingdom. 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.

⁷ 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”.

2. At the third session of the Ad Hoc Committee, Yemen proposed the following language for article 9 bis (see A/AC.261/L.105):

*“Article 9 bis
“Measures with respect to the judiciary*

“In observance of judicial independence, each State Party shall take, in accordance with fundamental principles of its domestic law and as part of its anti-corruption policy, appropriate measures to prevent and combat any opportunities for corruption that may arise in its judiciary.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

*“Article 9 bis
“Measures relating to the judiciary and prosecution services*

“1. Bearing in mind the independence of the judiciary and its crucial role 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. Such measures may include rules with respect to the conduct of members of the judiciary.

“2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar⁸ to that of the judicial service.”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 9 bis of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁸ It was agreed that the *travaux préparatoires* would indicate that reference to similar independence should be understood to include cases where such independence is identical.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 11

Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role 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. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

C. Interpretative notes

The interpretative note on article 11 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 15) is as follows:

Paragraph 2

Reference to similar independence should be understood to include cases where such independence is identical.

Article 12. Private sector

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 11¹

“Private sector

“1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for engaging in corruptive practices, involving one or more legal persons incorporated within their jurisdiction, through appropriate legislative, administrative or other measures. Those measures should focus on:

“(a) Strengthening cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

“(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

“(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;

“Option 1²

“(d) Preventing the misuse of legal persons for corruption or criminal acts related specifically to corruption, inter alia, through the establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC/261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). Paragraph 1 is based on article 31, paragraph 2, of the Organized Crime Convention (amended); paragraph 2 reflects the principle of deregulation; and paragraph 3 reflects the principle expressed in the 1996 Recommendation of the Council of the OECD on the Tax Deductibility of Bribes to Foreign Public Officials.

² Text taken from the proposal submitted by Austria and the Netherlands (A/AC/261/IPM/4).

“Option 2³

“(d) Preventing the misuse of legal persons for committing or concealing acts of corruption by the adoption of measures concerning the identification of the constituents, holders of capital and shares, the identification of economic beneficiaries, registration obligations, advertising rules and, more generally, transparency in financial, legal and accounting transactions, inter alia, [...];

“(e) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity.

“2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to promote transparency and competition among companies incorporated within their jurisdiction, by avoiding any such regulations as may be redundant or prone to misuse as a result of corruption.

“3. Each State Party shall deny the tax deductibility of bribes, the latter being one of the constituent elements of the offences established in accordance with article [...] [Criminalization of corruption involving a public official] or [...] [Criminalization of corruption in the private sector] of this Convention.

“Article 12⁴

“Accounting

“1. In order to combat corruption effectively, each State Party shall take such measures as may be necessary, 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 establishment of off-the-book accounts, the making of off-the-book or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of committing any of the offences established in accordance with articles [...] [Criminalization of corruption by a public official], [...] [Criminalization of corruption in the private sector] or [...] [Criminalization of the laundering of proceeds of corruption] of this Convention or of hiding such offences.

“2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.⁵

“3. Each State Party shall take such measures as are necessary to ensure that enterprises and commercial companies have sufficient internal accounting controls to make it possible to detect acts of corruption.⁶

“4. Each State Party shall take such measures as are necessary to ensure that accounting in enterprises and commercial companies is subjected to appropriate

³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

⁴ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

⁵ Article 8 of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (with slight changes).

⁶ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

auditing and certification procedures, in particular by professionals or specialized enterprises approved by the public authority.”⁶

Rolling text (A/AC.261/3/Rev.1)

“Article 117

“Private sector

“1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce⁸ existing or future opportunities for engaging in corruption and criminal acts related specifically to corruption,⁹ involving the private sector through appropriate legislative, administrative or other measures. Those measures should¹⁰ focus on:¹¹

“(a) Strengthening cooperation between law enforcement agencies or prosecutors¹² and relevant private entities;¹³

“(b) Promoting the development of standards and procedures designed to safeguard the integrity of private entities, as well as codes of conduct for all relevant professions, such as lawyers, notaries public, tax consultants and accountants;¹⁴

“(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;¹⁵

“(d) Preventing the misuse of legal persons for committing or concealing acts of corruption by identifying constituents, holders of capital and shares, economic

⁷ Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 11 (A/AC.261/L.22). The revised proposal 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. While many delegations were generally supportive of this article, many also expressed concern about the level of regulatory detail it contained. In particular, concern was expressed about the many detailed regulatory terms used in paragraph 1 (d). Some delegations suggested the deletion of this article.

⁸ Some delegations proposed to use the word “curtail” or “eliminate” instead of the word “reduce”.

⁹ Some delegations suggested supplementing this sentence with the words “and other offences specifically related to corruption”.

¹⁰ Some delegations suggested the inclusion of the expression “inter alia” here.

¹¹ Mexico proposed the following amended text for paragraph 1 (A/AC.261/L.34):

“(b) Codes of ethics and standards of conduct for the correct, honourable and proper performance of activities by individuals. Such standards shall be aimed at preventing conflicts of interest, both between individuals and between individuals and public officials. They shall also establish methods and systems for promoting the reporting of illicit acts of corruption between individuals and in their dealings with public officials;

“(c) [Former subpara. (b)];

“(d) [Former subpara. (c)];

“(e) [Former subpara. (d)];

“(f) [Former subpara. (e)];

“(g) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;

“(h) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party.”

¹² Some delegations proposed the deletion of the reference to prosecutors, as they were considered to be part of law enforcement agencies.

¹³ Many delegations called for a revision of this article to ensure consistency in the terminology used. However, some delegations were of the view that terms such as “private entities” did not require a definition, as they had not been defined in the Organized Crime Convention, from which this article had been drawn.

¹⁴ It was agreed that this indicative list might be further developed in the *travaux préparatoires*. However, several delegations suggested that there was no need to go into detail.

¹⁵ France expressed reservations about this paragraph.

beneficiaries, through registration obligations, advertising rules and, more generally, by promoting transparency in financial, legal and accounting transactions, inter alia, through the establishment or maintenance of public records on legal and natural persons involved in the establishment, management and funding¹⁶ of legal persons;

“(e) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity.¹⁷”

“2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to promote transparency and competition among companies incorporated within their jurisdiction, by avoiding any such regulations as may be redundant or prone to misuse as a result of corruption.

“3. Each State Party shall deny the tax deductibility of bribes, the latter being one of the constituent elements of the offences established in accordance with article [...] [Criminalization of corruption involving a public official] or [...] [Criminalization of corruption in the private sector] of this Convention.

“Article 12¹⁸

“Accounting

“1. In order to combat corruption effectively, each State Party shall take such measures as may be necessary, 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 establishment of off-the-books accounts, the making of off-the-books, double bookkeeping, improperly registered¹⁹ or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of committing any of the offences established in accordance with articles [...] [Criminalization of corruption by a public official], [...] [Criminalization of corruption in the private sector] or [...] [Criminalization of the laundering of proceeds of corruption] of this Convention or of hiding such offences.

“2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications

¹⁶ Some delegations proposed the deletion of this word, pointing out that its inclusion would require comprehensive record keeping on a plethora of forms of ownership and debt, which would be almost impossible to provide.

¹⁷ Pakistan proposed to add the following text, which had been previously contained in article 18, paragraph 2, subparagraphs (d) (i) and (ii) (A/AC.261/3, (Part I)):

“(i) The creation of public records on legal and natural persons who have taken part in the formation, administration and financing of legal persons;

“(ii) The creation of the possibility of preventing persons convicted of crimes covered by this Convention from acting as administrators in companies of other legal persons for a reasonable period of time by a court order or any other suitable procedure.”

¹⁸ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

¹⁹ Proposed by Mexico.

referred to in paragraph 1 of this article²⁰ in respect of the books, records, accounts and financial statements of such companies.²¹

“3. Each State Party shall take such measures as are necessary to ensure that enterprises and commercial companies have sufficient internal accounting controls to make it possible to detect acts of corruption.

“4. Each State Party shall take such measures as are necessary to ensure that accounting in enterprises and commercial companies is subjected to appropriate auditing and certification procedures, in particular by professionals or specialized enterprises approved by the public authority.”²²

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 11²³ “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;]²⁴

“(d) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved

²⁰ Proposed by Mexico. With the insertion of these words in this paragraph and the insertion of its proposal in paragraph 1, Mexico withdrew its proposal for article 15 on “Accounting measures to combat the bribing of public officials” (finally deleted — see relevant part).

²¹ Article 8 of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (with slight changes). Some delegations suggested that this paragraph should be moved to the chapter on criminalization.

²² Some delegations suggested that paragraphs 3 and 4 were redundant and should be deleted. The European Commission, on behalf of the States Members of the United Nations that are members of the European Union, proposed a revised text for paragraphs 3 and 4 to replace the previous versions of article 12 contained in the proposals submitted by Austria and the Netherlands (A/AC/261/IPM/4) and France (A/AC.261/IPM/10) as follows:

“3. Each State Party shall take such measures as may be necessary to encourage companies to adopt appropriate internal accounting controls, taking into account their size.

“4. Each State Party shall take such measures as may be necessary to ensure that the accounting and statutory financial statements of companies, taking into account their size, are subjected to appropriate auditing and certification procedures.”

²³ 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.

²⁴ Subparagraph (c) might be deleted after consideration of article 14 (Measures to combat money-laundering).

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 [...] [Criminalization of corruption involving a public official] or [...] [Criminalization of corruption in the private sector]²⁵ of this Convention, and, where appropriate, other expenses incurred in the furtherance of corrupt conduct.²⁶

“Article 12²⁷

“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 regulations²⁸ 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:²⁹

“(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.

²⁵ 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”.

²⁶ Reservations were expressed by one delegation regarding the mandatory nature of paragraph 2.

²⁷ 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 working group was coordinated by South Africa. The Ad Hoc Committee did not review this text after its distribution.

²⁸ The Libyan Arab Jamahiriya proposed to replace the words “domestic laws and regulations” with the words “domestic legislation” (A/AC.261/L.144).

²⁹ Reference to other articles in the draft convention can only be made once chapter III, on criminalization, has been finalized.

“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,³⁰ 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.”

Notes by the Secretariat

1. 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 article 8 bis). The text of the proposed new article was as follows:

“Article 8 bis “Code of business ethics

“1. States Parties shall adopt such measures as may be necessary to promote a commitment by the business sector to building an ethical culture and to establishing responsibility, integrity and transparency in enterprises, in particular in the economic and financial sectors. To that end, States Parties shall encourage the adoption of the following principles and values by businesses and therefore ensure that they are disseminated, assimilated and applied:

“(a) Cooperation in the fulfilment of the State’s aims through strict observance of labour, tax, administrative, commercial and contractual obligations;

“(b) Respect for the principles of transparency, responsibility and economy in the arrangement of contracts with State bodies and compliance with basic legal requirements in contractual administration;

“(c) Ethical conduct in direct public procurement, bidding and competitive tenders, the strict fulfilment of obligations deriving therefrom and an ethical attitude to public officials;

“(d) The establishment of agreed monitoring and follow-up mechanisms to guarantee transparency in public and private procurement;

“(e) The guaranteed provision of quality goods and services and the availability to consumers of sufficient and adequate information to enable them to assert their rights, particularly that of freedom of choice;

“(f) The provision of truthful and timely information on the economic and financial position of enterprises.

“2. In accordance with their legal systems, States Parties shall take such measures as may be necessary to observe the principles set out in paragraph 1 of this article, including the possibility of establishing penalties for their non-observance.”

³⁰ The term “private entities” will need to be defined and discussed further when this proposal is considered.

At the fifth session of the Ad Hoc Committee (Vienna, 10-21 March 2003), Colombia proposed new language for this new article (see A/AC.261/L.190) to read as follows:

*“Article [...]”
“Code of business ethics”*

“Each State Party shall promote the adoption in the private sector of codes of business ethics based on principles and values of integrity, transparency and social responsibility. States Parties shall also endeavour to promote the use of good commercial practices among businesses and in the contractual relations of businesses with the State.”

Sixth session: Vienna, 21 July-8 August 2003

United States of America (A/AC.261/L.210)

*“Article 11”
“Private sector”*

“1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and audit standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

“2. Measures to accomplish these ends may include, inter alia:

“(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;]

“(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;

“(g) 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:

“(i) The establishment of off-the-books accounts;

“(ii) The making of off-the-books or inadequately identified transactions;

“(iii) The recording of non-existent expenditure;

“(iv) The entry of liabilities with incorrect identification of their objects; and

“(v) The use of false documents;

“[(h) Ensuring that private entities, taking into account their size, have sufficient internal accounting controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private entities are subjected to appropriate auditing and certification procedures.]

“3. 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 [...] of this Convention, and, where appropriate, other expenses incurred in furtherance of corrupt conduct.”

Rolling text (A/AC.261/3/Rev.5)

“Article 11

“Private sector

“1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

“2. Measures to achieve these ends may include, inter alia:

“(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, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

“(c) 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;

“(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

“(e) 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;

“(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

“3. In order to prevent corruption, each State Party shall take such measures as may be necessary, 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 accordance with 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 foreseen by the law.

“4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles [...] [Bribery of public officials] and [...] [Bribery of foreign public officials or officials of a public international organization] of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.”

Notes by the Secretariat

2. Paragraph 1 of article 12 was merged into article 11 and the remaining part was deleted.

3. At its sixth session, the Ad Hoc Committee provisionally approved article 11 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 12
Private sector*

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(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, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) 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;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) 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;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, 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 accordance with 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 foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13. Participation of society

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 13¹

“Civil society

“1. Each State Party shall take appropriate measures within its means to promote an active civil society and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

“(a) Inclusion of the public in decision-making processes;

“(b) Optimum access to information for the public and the media;

“(c) Protection of ‘whistle-blowers’ as set forth in article [...] [Protection of ‘whistle-blowers’ and witnesses] of this Convention;

“(d) Public support for networks of non-governmental organizations; and

“(e) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.”²

“2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to the limits required for the smooth operation of inquiries, with respect for the rules of conduct in force, the rights to defence and the presumption of innocence.”³

¹ Text taken from the proposals submitted by Argentina (A/AC.261/IPM/20) and Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Based on article 31, paragraph 5, of the Organized Crime Convention (with changes).

³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

Rolling text (A/AC.261/3/Rev.1)

“Article 13^{4,5,6}

“Civil society⁷”

“1. Each State Party shall take appropriate measures within its means⁸ to promote an active civil society, including non-governmental organizations, and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

“(a) Involvement of the public in decision-making processes by enhancing transparency;⁹

“(b) Optimum¹⁰ access to information for the public;

“(c) Protection of ‘whistle-blowers’¹¹ as set forth in article [...] [Protection of ‘whistle-blowers’ and witnesses] of this Convention; and

⁴ Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 13 (A/AC.261/L.24). The revised proposal 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. Some delegations suggested the deletion of this article.

⁵ China proposed that article 13 be amended to read (A/AC.261/L.29):

“Article 13

“Public awareness

“1. States Parties shall endeavour to promote public awareness regarding the existence, causes, gravity and threat of corruption.

“2. States Parties shall encourage the media to exercise functions of supervision over corruption by disseminating information on cases involving corruption.”

⁶ Mexico proposed to replace this article with the following text (A/AC.261/L.34):

“1. Each State Party shall take appropriate measures within its means to promote an active civil society, including non-governmental organizations, and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

“(a) Inclusion of the public in decision-making processes through greater transparency;

“(b) Optimum access to information for the public;

“(c) Protection of ‘whistle-blowers’ as set forth in article [...] [Protection of ‘whistle-blowers’ and witnesses] of this Convention; and

“(d) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.

“2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to restrictions established by law.”

⁷ Many delegations were of the view that the title and subsequent terminology used in the text of this article could be amended to make the article more applicable in different systems. Terms suggested to achieve this goal were “public awareness” or “public involvement”.

⁸ Some delegations suggested adding the words “in accordance with fundamental principles of domestic law”.

⁹ Several delegations were of the view that this paragraph could be deleted.

¹⁰ Many delegations considered this term too vague and therefore inappropriate for a legal instrument.

¹¹ Many delegations were of the view that this term was inappropriate and a better one should be found to replace it. In this connection, several delegations suggested the use of the terms “informants” or “individuals who expose acts of corruption”. Some delegations also suggested that this provision should be moved to the article on the protection of witnesses. It should be noted that during the second session of the Ad Hoc Committee, in order to protect those persons called “whistle-blowers” in article 43, it was proposed by Austria, Colombia, France, Mexico, the Netherlands and Turkey, first, to amend subparagraph 1 (c) of article 13 (Civil society) to read as follows (see A/AC.261/L.73):

“(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;” and, second, to add a third paragraph to article 13, as follows:

“3. Each State Party shall take all appropriate measures to ensure that the bodies referred to in article 5 bis are known to the public and shall provide access to those bodies for any incidents that may be considered to constitute an offence as defined in this Convention to be reported, including anonymously.”

(See also under article 32 of the Convention.)

“(d) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.^{12, 13}

“2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to restrictions that are provided by law¹⁴ and 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.”¹⁵

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 13¹⁶ “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 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;

¹² It was suggested that the proposal of Saudi Arabia (A/AC.261/L.15) could be incorporated into the present text. That proposal read as follows:

“States Parties shall, in accordance with fundamental principles of their domestic law and wherever possible, take such measures as may be necessary to introduce the subject of corruption and its harmful effects in the curricula of their general and university education.”

¹³ The Philippines proposed the insertion of another subparagraph, which would read as follows (A/AC.261/IPM/24): “Creation of community-based corruption prevention units or junior graft watch units to service as accredited private monitors.”

¹⁴ Some delegations proposed to end this paragraph at this point, omitting the specific references contained in subparagraphs (a) and (b). Some delegations who expressed concern about this paragraph were of the view that it was not appropriate for the Convention to tamper with concepts of media freedoms and rights addressed extensively in existing human rights instruments. Other delegations considered the inclusion of the subparagraphs essential.

¹⁵ Pakistan proposed to add the following paragraph to this article:

“States Parties shall ensure promotion and development of a framework of cooperation to strengthen the capacity and capability of those States which do not have a developed social infrastructure to undertake effective measures under paragraph 1 of this article.”

¹⁶ 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, and coordinated by the Syrian Arab Republic. The Ad Hoc Committee did not review this text after its distribution.

“(d) Public information activities that contribute to non-tolerance of corruption, as well as programmes of public education, including school and university curricula.¹⁷

“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 5 bis [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.”¹⁸

Notes by the Secretariat

1. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee decided to consider, during its consideration of chapter II of the draft convention, a proposal submitted by Mexico on the insertion in the draft convention 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.”

¹⁷ Zambia proposed that the following subparagraph be added at the end of paragraph 1: “(e) Enlisting and fostering of public support against corrupt practices” (see A/AC.261/L.92). Algeria proposed to amend the *chapeau* of paragraph 1 and subparagraph 1 (a) to read as follows (see A/AC.261/L.93):

“1. Each State Party shall take appropriate measures within its means and in accordance with fundamental principles of its domestic law to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption, by promoting, in particular:

“(a) Enhancement of transparency in decision-making processes.”

¹⁸ Yemen proposed that article 13 read as follows (A/AC.261/L.105):

“Article 13
“Civil society

“1. Each State Party shall take appropriate measures within its means to create an active civil society, by establishing non-governmental and civil organizations that shall endeavour to raise public awareness of corruption, its causes and its harmful effects. The role of civil society should be strengthened by measures such as:

“(a) Involvement of the public in providing proposals and views that help in preventing corruption and related crimes;

“(b) Taking measures to introduce the subject of corruption and its harmful effects in information activities and various school curricula.

“2. States Parties shall, in accordance with their domestic law, guarantee to the media the possibility of obtaining information on cases of corruption in order to uncover the reasons for them and suggest appropriate solutions to deal with them, while taking into account:

“(a) Respect for the personal rights of citizens without infringing on them;

“(b) Public order and public ethics.”

(See also under article 61 of the Convention.) No further action was taken with regard to that proposal at the sixth session of the Ad Hoc Committee (see below).

Sixth session: Vienna, 21 July-8 August 2003

United States of America (A/AC.261/L.210)

“Article 13

“Participation of society

“1. Each State Party shall take appropriate measures, within its means and in accordance with the fundamental principles of its domestic legal system, to promote the active participation of civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of corruption. This participation should be strengthened by measures such as, inter alia:

“(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; and

“(e) Encouraging the freedom of the media and others to seek, receive, publish and disseminate information concerning corruption.

“2. Each State Party shall take measures to ensure that appropriate anti-corruption bodies referred to in article [...] [Preventive anti-corruption bodies] of this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence as defined in this Convention.”

Rolling text (A/AC.261/3/Rev.5)

“Article 13

“Participation of society

“1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations,¹⁹ in the prevention of and the fight against corruption and to raise public awareness

¹⁹ It was agreed that the *travaux préparatoires* would indicate that reference to non-governmental organizations and community-based organizations relates to such organizations established or located in the country. This note is intended as an explanation and not as an amendment to this paragraph.

regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

“(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

“(b) Ensuring that the public has effective access to information;

“(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

“(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

“(i) For respect of the rights or reputations of others;

“(ii) For the protection of national security or *ordre public* or of public health or morals.²⁰

“2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 13 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

²⁰ It was agreed that the *travaux préparatoires* would indicate that the intention behind paragraph 1 (e) of article 13 is to stress those obligations which States parties have already undertaken in various international instruments concerning human rights to which they are parties and should not in any way be taken as modifying their obligations.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 13
Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, 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 public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

C. Interpretative notes

The interpretative notes on article 13 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 16 and 17) are as follows:

Paragraph 1

(a) Reference to non-governmental organizations and community-based organizations relates to such organizations established or located in the country. This note is intended as an explanation and not as an amendment to paragraph 1;

Subparagraph (d)

(b) The intention behind paragraph 1 (d) is to stress those obligations which States parties have already undertaken in various international instruments concerning human rights to which they are parties and should not in any way be taken as modifying their obligations.

Article 14. Measures to prevent money-laundering

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 14¹

“Measures to combat money-laundering

“1. Each State Party:

“(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions;

“(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, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

“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. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention,

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

“4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.”

Rolling text (A/AC.261/3/Rev.1)

“Article 14²

“Measures to combat money-laundering

“1. Each State Party:

“(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions;

“(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, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

“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.

“[2 bis. Each State Party shall endeavour to take effective measures to ensure that there is satisfactory monitoring of abnormal banking transactions and, in appropriate cases, the monitoring department may require proof to satisfy itself with regard to the legitimacy of the origin of the money.]³

“3. 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.

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). At the first session of the Ad Hoc Committee, there was broad acceptance of the importance of the article. However, as the text had been derived from article 7 of the Organized Crime Convention, strong preference was voiced to avoid departing from the formulation of that article. In addition, it was felt that this article would need to be revisited after consideration of chapter V of the draft convention.

³ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23). This proposal was not discussed at the first session of the Ad Hoc Committee.

“4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.”

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 14^{4,5}

“Measures to combat money-laundering [resulting from corruption]⁶”

“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 organizations]⁷ [persons or legal entities that provide formal or informal services for the transmission of money or value]⁸ and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect [money-laundering mechanisms]⁷ all forms of money-laundering, which regime shall emphasize requirements for customer [or beneficial owner]⁹ identification, record-keeping and the reporting of suspicious [or unusual]⁷ transactions [and assessment of the legitimacy of sources];¹⁰

“(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

⁴ This 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. Yemen proposed the following language for article 14 (see A/AC.261/L.105):

“Article 14

“Measures to combat money-laundering

“1. Each State Party shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions.

“2. 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.

“3. 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.

“4. States Parties shall endeavour to develop global, regional, subregional and bilateral cooperation among judicial and financial regulatory authorities in order to combat money-laundering.”

⁵ 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 was to be taken up during the third reading of the draft text.

⁶ Proposed by Lebanon.

⁷ Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

⁸ Proposed by the United States.

⁹ Proposed by Switzerland.

¹⁰ Proposed by Pakistan.

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,]⁷ analysis and [, where appropriate,]⁷ dissemination of information [received through reports of suspicious or unusual transactions]⁷ regarding potential money-laundering;¹¹

“[(c) Shall consider the possibility of appointing compliance officials as an executive operational link in its banking and non-banking entities.]¹²

“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.]¹³

“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.

“5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation [and technical assistance]¹⁴ 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.]¹⁵

“[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

¹¹ The Czech Republic proposed to transfer the last four lines of subparagraph 1 (b) to article 39 (Specialized authorities) so that the amended text would read as follows (see A/AC.261/L.98):

“(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.”

¹² Proposed by Cuba (A/AC.261/L.149).

¹³ Proposed by the United States.

¹⁴ Proposed by Pakistan.

¹⁵ Proposed by Ukraine (A/AC.261/L.129).

take appropriate measures to apply the provisions of articles 33 [Criminalization of money-laundering of proceeds of corruption] and 62 [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.]”¹⁵

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 14

“Measures to prevent”¹⁶ money-laundering

“1. Each State Party shall:

“(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies¹⁷ particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;¹⁸

“(b) 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, analysis and dissemination of information regarding potential money-laundering.¹⁹

“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.

¹⁶ The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to change the title of article 14 to read “Measures to prevent money-laundering”, thus making it consistent with the title of chapter II of the draft convention (see A/AC.261/24/Corr.1, para. 11).

¹⁷ It was agreed that the *travaux préparatoires* would indicate that the words “other bodies” may be understood to include intermediaries, which in some jurisdictions may include stockbroking firms, other securities dealers, currency exchange bureaux or currency brokers.

¹⁸ It was agreed that the *travaux préparatoires* would indicate that the words “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.

¹⁹ It was agreed that the *travaux préparatoires* would indicate that the establishment of a financial intelligence unit called for by this subparagraph is intended for cases where such a mechanism does not yet exist.

“3. States Parties shall consider implementing appropriate and 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.

“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.²⁰

“5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

[Paragraphs 6 and 7 were deleted.]”

Notes by the Secretariat

1. At its sixth session, the Ad Hoc Committee provisionally approved article 14 of the draft convention (see A/AC.261/22, para. 22).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

3. The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention had also the task to review the concordance between articles of the draft convention that contained restatements of provisions of the Organized Crime Convention and the respective articles of that Convention. In that regard, the consistency group decided that all four interpretative notes to article 7 of the Organized Crime Convention were relevant to article 14 of the draft convention and thus should accompany that article as well (see A/AC.261/24 and Corr.1, para. 2, footnote 1).

²⁰ It was agreed that the *travaux préparatoires* would indicate that, during the negotiations, the words “relevant initiatives of regional, interregional and multilateral organizations” were understood to refer in particular to the Forty Recommendations and the Eight Special Recommendations of the Financial Action Task Force on Money Laundering, as revised in 2003 and 2001, respectively, and, in addition, to other existing initiatives of regional, interregional and multilateral organizations against money-laundering, such as the Financial Action Task Force of South America against Money Laundering, the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money- Laundering Group, the European Union and the Organization of American States.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 14

Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 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, analysis and dissemination of information regarding potential money-laundering.

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 appropriate and 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.

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.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

C. Interpretative notes

The interpretative notes on article 14 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 18-21) are as follows:

Paragraph 1

Subparagraph (a)

(a) The words “other bodies” may be understood to include intermediaries, which in some jurisdictions may include stockbroking firms, other securities dealers, currency exchange bureaux or currency brokers;

(b) The words “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;

Subparagraph (b)

(c) The establishment of a financial intelligence unit called for by this subparagraph is intended for cases where such a mechanism does not yet exist;

Paragraph 4

(d) During the negotiations, the words “relevant initiatives of regional, interregional and multilateral organizations” were understood to refer in particular to the Forty Recommendations and the Eight Special Recommendations of the Financial Action Task Force on Money Laundering, as revised in 2003 and 2001, respectively, and, in addition, to other existing initiatives of regional, interregional and multilateral organizations against money-laundering, such as the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force of South America against Money Laundering and the Organization of American States.

Chapter III

Criminalization and law enforcement

Notes by the Secretariat

1. At the first session of the Ad Hoc Committee, South Africa submitted a proposal that was intended to consolidate in a single article a number of criminalization provisions (see A/AC.261/L.11):

“(a) The solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

“(b) The offering or granting, directly or indirectly, by a public official, of any article of monetary value or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

“(c) Any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;

“(d) The diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, an independent agency or an individual that such official received by virtue of his or her position for purposes of administration, custody or other reasons;

“(e) The offering, giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, in order for him or her to act, or to refrain from acting, in breach of his or her duties;

“(f) The offering, giving, solicitation or acceptance, directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision-making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the requesting, receiving or acceptance of the offer or promise of such an advantage, in consideration of the influence, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result;

“(g) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

“(h) Participation, as a principal, co-principal, agent, instigator, accomplice or accessory after the fact or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.”

During the discussion at the first session of the Ad Hoc Committee, many delegations expressed the wish to consider chapter III in the form reflected in the relevant rolling text of the draft convention (see under pertinent articles of the convention), without precluding reverting to the approach of the proposal of South Africa after completing such consideration.

2. At the fourth session of the Ad Hoc Committee, the Russian Federation submitted a proposal that would seek to consolidate the criminalization articles of

chapter III (see A/AC.261/L.163). The proposed consolidated text, which was accompanied by explanatory comments (see A/AC.261/L.163/Add.1), was as follows:

*“Article [...]”
“Criminalization of bribery involving 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:

“(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or for 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 extortion or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or for another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

*“Article [...]”
“Abuse of power”*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the abuse of his or her official functions or any act or omission in the discharge of those functions by a public official, for the purpose of obtaining illicit benefits for himself or herself or for a third party, in particular:

“(a) The improper use of any classified or confidential information that that public official has obtained in the performance of his or her functions;

“(b) The violation of disqualification and conflict-of-interest rules for recruitment to and progression through state service, as laid down in the internal employment regulations of the State Party.

*“Article [...]”
“Trading in influence”*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert undue influence over the decision-making of a public official in return for a consideration, whether or not such advantage is for himself or herself or for another person or entity, as well as the request, receipt or acceptance of the offer or promise of such an advantage in return for a consideration, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

*“Article [...]”
“Criminalization of other acts of corruption”*

“Each State Party may adopt such legislative and other measures as may be necessary to establish as offences of corruption, in accordance with basic principles of its domestic legal system, other acts defined under its law as criminal offences.

*“Article [...]”
“Criminalization of corruption involving foreign public officials or
international civil servants”*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the acts referred to in [articles [...]] (Criminalization of bribery involving a public official), [...] (Abuse of power) and [...] (Trading in influence)] [article [...]] (Criminalization of bribery involving a public official)] of this Convention when they involve a foreign public official or an international civil servant.”

3. The initial title of chapter III of the draft convention read “Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement”. That title remained unchanged until the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), at which the Committee considered, finalized and approved the text of the draft convention. In the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260, the title of chapter III was amended to read “Criminalization and law enforcement”. That was in line with the recommendation of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, which had considered that the title of chapter III was lengthy compared with the titles of the other chapters (see A/AC.261/24 and Corr.1, para. 15).

4. The Ad Hoc Committee approved the following interpretative note on chapter III of the convention, as contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 22):

It is recognized that States may criminalize or have already criminalized conduct other than the offences listed in this chapter as corrupt conduct.

Article 15. Bribery of national public officials

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 19

“Criminalization of corruption involving a public official

“Option 1¹

“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, 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, 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.

“Option 2²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption:

“(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, or the promise to grant them, in exchange for any act or omission in the performance of his or her public functions;

“(b) The promising, offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.

¹Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

²Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“Option 3³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) Bribing of a public official: the promise, offering or giving to a public official or a person who performs public duties, 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 public duties;

“(b) Bribe-taking by a public official: the solicitation or acceptance by a public official or a person who performs public duties, 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 public duties.

“Option 4⁴

“Each State Party shall take the necessary legislative and other administrative measures to criminalize the following actions, in accordance with basic principles of its domestic law:

“(a) Promising, offering or giving a benefit to a public official, directly or indirectly, to the official himself or herself or to an organization in order to make that official perform or refrain from performing his or her official duties;

“(b) Requesting or accepting a benefit by a public official, directly or indirectly, to the official himself or herself or to an organization in order to make that official perform or refrain from performing his or her official duties.

“Option 5⁵

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) A public official demanding or accepting, either directly or indirectly, any object of pecuniary value such as a gift, promise or undue advantage of any nature, whether for himself or herself or for another person, in exchange for an act or an omission in the discharge of his or her duties;

“(b) Offering or giving a public servant either directly or indirectly, any object of pecuniary value such as a gift, favour or advantage, whether for himself or herself or for another person, in exchange for an act or an omission in the discharge of his or her duties.

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁵ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

*“Article 28
“Improper benefits*

“Option 1²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.

“Option 2³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) Any act or omission in the discharge of his or her duties by a government official or a person who performs public functions for the purpose of obtaining illicit benefits for himself or herself or for a third party;

“(b) Any arbitrary or unjust act by a public official in the discharge of, or exceeding, his or her functions.

“Option 3⁵

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the soliciting or receiving, either directly or indirectly, by a public servant of any undue advantage for himself or herself or for another person, in order to carry out or refuse to carry out an act in the exercise of his or her functions.”

Rolling text (A/AC.261/3/Rev.1)*“Article 19**“Criminalization of corruption involving a public official⁶**“Option 1⁷*

“Each State Party shall adopt⁸ such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:⁹

“(a) The promise, offering or giving to a public official, 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, 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.

“Option 2¹⁰

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption:

“(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage¹¹ for himself or herself or for another person or entity, or the promise to grant them, in exchange for any act or omission in the performance of his or her public functions;

⁶ At the first session of the Ad Hoc Committee, many delegations proposed to replace the words “corruption involving a public official” with the words “bribery of public officials”, since the text of this article covered only the criminalization of bribery involving a public official, but not other corrupt activities. Some delegations wished to retain the current formulation of the title, as it was derived from article 8 of the Organized Crime Convention. One delegation suggested the inclusion of the word “domestic” or “national” to qualify “public official”. It was suggested that that title would need to be finalized after determination of the contents of this and other articles in this chapter.

⁷ At the first session of the Ad Hoc Committee, Colombia indicated that it was ready to withdraw its proposal (which appeared as option 3 in the previous version of the draft text), as its original intention was to follow the formulation of the Organized Crime Convention, to which this option was closest. Many delegations expressed their preference for this option, in view of the fact that it was derived from the Organized Crime Convention and not only represented recent consensus, but was also a text of high quality. Other delegations stated that consensus language from the Organized Crime Convention should not act as a bar to improving international law and meeting the challenges posed by the new convention.

⁸ Some delegations proposed the inclusion of the clause “in accordance with fundamental principles of its domestic law”. Many other delegations opposed the inclusion of such a clause in criminalization articles of the draft convention and indicated that a provision similar to that of article 34, paragraph 1, of the Organized Crime Convention, which was included in article 68 of the present draft text, would be sufficient to meet concerns of delegations.

⁹ Several delegations suggested that intent was implied in the types of criminal conduct covered by this and other articles in this chapter and should not be made a constituent element of the offence. Other delegations recalled the lengthy debates on this subject during the negotiations of the Organized Crime Convention, emphasizing the need for the inclusion of this element for many legal systems. Those delegations also recalled the solution found in the Organized Crime Convention, with the inclusion of language such as that contained in paragraph 2 of article 5 of the Convention, and suggested that a similar course of action be followed also in respect of the criminalization provisions in the present draft convention.

¹⁰ Many delegations expressed their preference for this option, in view of the broader approach it took to the question of public officials, especially through the inclusion of persons performing public functions. Several delegations pointed out that this was a matter pertaining to a decision on the definition of “public official”, which was still outstanding. Several delegations suggested that options 1 and 2 could be merged. Other delegations, while positively disposed to such a merger, suggested that this possibility should be explored after discussion of the chapter on criminalization. Options 4 and 5 were withdrawn.

¹¹ Some delegations were in favour of the specificity contained in this paragraph on the matter of undue benefit. Other delegations were of the view that attempts to compile lists in legal texts often resulted in omissions and preferred a more general formulation, as the one contained in option 1.

“(b) The promising, offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.

*“Article 28
“Improper benefits”^{12, 13}*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.”

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

*“Article 19¹⁴
“[Bribery] [Corruption] 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],¹⁵ 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],¹⁵ 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.

¹²At the first session of the Ad Hoc Committee, Colombia and the Philippines withdrew previous options 2 and 3, respectively.

¹³During the first reading of the draft text at the first session of the Ad Hoc Committee, it was pointed out that the title was not appropriate to reflect the offence proposed to be established by this article. While most countries were familiar with the offence, it was pointed out that in recent evolution and subsequent revisions of 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. The Vice-Chairman with responsibility for this chapter suggested that if the Ad Hoc Committee decided to retain this article, the formulation could be improved through consultations.

¹⁴The text of this article is a revised version submitted by Austria, Mexico, the Netherlands and Yemen, 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, and is the result of the work of an informal working group established following the second reading of the draft text at the third session of the Ad Hoc Committee (A/AC.261/L.141). This revised version superseded the text proposed by Austria, Mexico and the Netherlands contained in document A/AC.261/L.106. The Ad Hoc Committee did not review this text after its distribution.

¹⁵The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

*“[Article 28¹⁶
“Improper benefits*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence of corruption the collection, directly or indirectly, by a public official [or a person who performs public functions], 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.]”

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

*“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], 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], 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.

*“[Article 28
“Improper benefit*

“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.]”

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 19 of the draft convention, subject to the resolution of an issue relating to the definition of “public official” contained in article 2, paragraph (a) (see A/AC.261/16, para. 25).

¹⁶The 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 the Czech Republic, Egypt, Mexico and Peru 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.

2. At its sixth session, the Ad Hoc Committee provisionally approved the deletion of article 28 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved article 19, as amended in line with the definition of “public official” contained in article 2, paragraph (a), of the convention. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 15

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, 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, 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.

Article 16. Bribery of foreign public officials and officials of public international organizations

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 19 bis

“Criminalization of corruption involving a foreign public official

“Option 1

“1. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Criminalization of corruption involving a public official] of this Convention involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.¹

“2. Such may reasonably be deduced from the circumstances.²

“Option 2³

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Active corruption of a national public official] of this Convention, involving an international civil servant, a member of a parliamentary assembly of an international organization or holders of judicial office or officials of an international court.

“2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Passive corruption of a national public official] of this Convention involving an international civil servant, a member of a parliamentary assembly of an international organization of which the State Party is a member or holders of

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). With regard to criminalization of the corruption of national public officials, France proposed using the provisions of article 8, paragraph 1, of the Organized Crime Convention as the basis for negotiations.

² Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

judicial office or officials of an international court whose jurisdiction is accepted by the State Party.

“Option 3⁴

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the intentional promising, offering or granting to a foreign public official, directly or indirectly, by its nationals or natural or legal persons who have habitual residence in its territory or are domiciled therein, of any article of monetary value or other undue benefit that are to his or her own advantage or to the advantage of another person or entity, such as a gift, favour or advantage, in exchange for which that official, in the performance of his or her public functions, performs or fails to perform any act in relation to an economic, financial or commercial transaction.

“Option 4⁵

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the offering by a citizen of a State Party to a public official of another State Party of money, articles of monetary value, favours or any other advantage in order that the official act or refrain from acting in the exercise of his or her duties in respect of a financial or commercial transaction.

“2. States Parties shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant; [national or foreign] parliamentarians and other members of [international] parliamentary assemblies; judges and officials of [international] courts; trading in influence whether as the source of influence or beneficiary of the advantage obtained [active or passive trading in influence]; laundering of proceeds from corruption offences; accounting offences related to corruption offences.⁶

“3. Each State Party shall adopt all legislative and administrative measures necessary in order to criminalize the behaviours listed in paragraph 1 of this article when committed against a foreign public official or when such action involves an international public official.”⁷

Notes by the Secretariat

1. During the first reading of the draft text, at the first session of the Ad Hoc Committee, several delegations drew attention to potential difficulties that any formulation of this article might entail in relation to jurisdictional matters and conflict with other international legal instruments concerning privileges and immunities. Other delegations stated that jurisdictional matters could be dealt with in article 50 (Jurisdiction), while privileges and immunities should not pose insurmountable problems, since they were subject to waivers under appropriate circumstances.

⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁵ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁶ See the Criminal Law Convention on Corruption of the Council of Europe (Council of Europe, *European Treaty Series*, No. 173).

⁷ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

2. During the first reading of the draft text, at the first session of the Ad Hoc Committee, several delegations stressed the advisability of drawing inspiration from the Organized Crime Convention and striving to find common ground on improved language.

3. During the first reading of the draft text, at the first session of the Ad Hoc Committee, several delegations expressed concern about whether it would be appropriate or feasible to envisage criminalization of passive corruption of foreign public officials. Other delegations were of the view that criminalization of passive corruption of foreign public officials was feasible, but required careful consideration and drafting.

4. During the first reading of the draft text, at the first session of the Ad Hoc Committee, Mexico and other delegations expressed concern that the proposed options 1, 2 and 4, as drafted, might be understood or interpreted to permit extraterritorial jurisdiction. Several other delegations pointed out that this was not the intention of this article and that this article should be considered in conjunction with and in the light of article 50 (Jurisdiction).

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 19 bis⁸

“Bribery of foreign public officials or officials of an international organization

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the promise, offering or giving to a foreign public official or an official of an 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].

“[2. Each State Party shall consider adopting [shall adopt] 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 an international organization, directly or indirectly, of [the offer 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].]”

⁸ The text of this article (A/AC.261/L.135, as amended in A/AC.261/L.137) incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman. Some delegations expressed concerns about the potential effects of this article on expanding jurisdiction beyond that based on the principle of territoriality. Other delegations held 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.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 19 bis⁹

“Bribery of foreign public officials or officials of a public international organization

“1. Each State Party shall adopt¹⁰ 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]¹¹ [, at least in the case of breach of such duties].^{12, 13}

“[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].”¹⁴

Sixth session: Vienna, 21 July-8 August 2003

Notes by the Secretariat

5. At its sixth session, the Ad Hoc Committee continued its work on article 19 bis, taking into consideration the proposed text submitted by the United States, contained in document A/AC.261/L.214. The United States, which coordinated an open-ended informal working group at the request of the Chairman, submitted

⁹Some 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.

¹⁰At 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.

¹¹Most 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.

¹²The text within brackets was supported by some delegations during the discussion held at the fifth session of the Ad Hoc Committee.

¹³The 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 (see A/AC.261/L.186).

¹⁴The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat jointly proposed (see A/AC.261/L.216, annex) that the content of paragraph 2 be divided into two separate paragraphs, the first (new paragraph 2) of which would retain the wording of the present paragraph 2, except for the words “or an official of a public international organization”, which should be deleted. The second paragraph would be a new paragraph 3 requiring the criminalization of passive bribery for officials of public international organizations, as follows:

“[3. States Parties shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by an official of a public international organization, directly or indirectly, of an undue advantage, for 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 duties [in relation to the conduct of international business] [, at least in the case of breach of such duties].”

revised versions of the entire article (A/AC.261/L.237) and part of it (A/AC.261/L.249), as follows:

United States of America (A/AC.261/L.237)

*“Article 19 bis
“Bribery of foreign public officials and officials of a
public international organization*

“1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official [or an official of a public international organization], directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

“2. Each State Party shall [adopt] [consider adopting] such legislative or other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official [or an official of a public international organization], directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the person act or refrain from acting in the exercise of his or her official duties.

“3. Each State Party shall [adopt] [consider adopting] such legislative or other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official, 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.

“[4. Each State Party shall [adopt] [consider adopting] such legislative or other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offer or giving of an undue advantage to an official of [the United Nations] [a public international organization], or the solicitation or acceptance of an undue advantage by an official of [the United Nations] [a public international organization of which that State Party is a member], directly or indirectly, 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.]”

United States of America (A/AC.261/L.249)

“Paragraph 3

“3. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue

advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties in relation to the conduct of international business.”

Rolling text (A/AC.261/3/Rev.5)

*“Article 19 bis
“Bribery of foreign public officials and officials of
public international organizations”¹⁵*

“1. Each State Party shall adopt 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 act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.^{16, 17}

“2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence,¹⁸ when committed intentionally,¹⁹ the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”²⁰

¹⁵It was agreed that the *travaux préparatoires* would indicate that this article is not intended to affect any immunities that foreign public officials or officials of public international organizations may enjoy in accordance with international law. The States parties noted the relevance of immunities in this context and encouraged public international organizations to waive such immunities in appropriate cases.

¹⁶It was agreed that the *travaux préparatoires* would indicate that a statute that defined the offence in terms of payments “to induce a breach of the official’s duty” could meet the standard set forth in each of these paragraphs, provided that it was understood that every public official had a duty to exercise judgement or discretion impartially and that this was an “autonomous” definition not requiring proof of the law or regulations of the particular official’s country or international organization.

¹⁷It was agreed that the *travaux préparatoires* would indicate that the phrase “the conduct of international business” is intended to include the provision of international aid.

¹⁸It was agreed that the *travaux préparatoires* would indicate that negotiating delegations considered it quite important that any State party that had not established this offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of this offence by a State party that had established it in accordance with the convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice.

¹⁹It was agreed that the *travaux préparatoires* would indicate that the word “intentionally” was included in this paragraph primarily for consistency with paragraph 1 and other provisions of the convention and is not intended to imply any weakening of the commitment contained in paragraph 2, as it is recognized that a foreign public official cannot “unintentionally” solicit or accept a bribe.

²⁰It was agreed that the *travaux préparatoires* would indicate that paragraph 1 requires that States parties criminalize active bribery of foreign public officials and paragraph 2 requires only that States parties “consider” criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs is due to the fact that the core conduct addressed by paragraph 2 is already covered by article 19, which requires that States parties criminalize the solicitation and acceptance of bribes by their own officials.

Notes by the Secretariat

6. At its sixth session, the Ad Hoc Committee provisionally approved article 19 bis of the draft convention (see A/AC.261/22, para. 22).

7. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 16

*Bribery of foreign public officials and officials of
public international organizations*

1. Each State Party shall adopt 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 act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

C. Interpretative notes

The interpretative notes on article 16 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 23-28) are as follows:

(a) This article is not intended to affect any immunities that foreign public officials or officials of public international organizations may enjoy in accordance with international law. The States parties noted the relevance of immunities in this context and encouraged public international organizations to waive such immunities in appropriate cases;

Paragraph 1

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

(c) The phrase “the conduct of international business” is intended to include the provision of international aid;

Paragraph 2

(d) Negotiating delegations considered it quite important that any State party that had not established this offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of this offence by a State party that had established it in accordance with the convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice;

(e) The word “intentionally” was included in this paragraph primarily for consistency with paragraph 1 and other provisions of the convention and is not intended to imply any weakening of the commitment contained in paragraph 2, as it is recognized that a foreign public official cannot “unintentionally” solicit or accept a bribe;

(f) Paragraph 1 requires that States parties criminalize active bribery of foreign public officials and paragraph 2 requires only that States parties “consider” criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs is due to the fact that the core conduct addressed by paragraph 2 is already covered by article 15, which requires that States parties criminalize the solicitation and acceptance of bribes by their own officials.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 22

“Misappropriation of property by a public official

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the misappropriation or removal of any movable or immovable property, public or private funds or securities or any other object entrusted to a public official by virtue of his or her position or mission.²

“Option 2³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper use by a public official or a person who performs public functions, for his or her own benefit or for that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of or in the performance of his or her functions.

“Option 3⁴

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the use, misuse, misappropriation, diversion and embezzlement or fraudulent or negligent loss of state property by public officials or individuals.

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² This provision is based on article 12 of the Criminal Law Convention on Corruption of the Council of Europe, with considerable changes. Criminalization, which deals both with trading in active influence and trading in passive influence, is deliberately confined to actions committed against or for an administration or a public authority of the State party. At this stage, trading in influence (active and passive) for a foreign public authority had not been taken into account.

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

*“Article 27
“Diversion of property*

“Option 1³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or for that of a third party, of any movable or immovable property, monies or securities belonging to the State or to an individual, that such official has received by virtue of his or her position for purposes of administration or custody or for other reasons.

“Option 2⁴

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the use, misuse, misappropriation, diversion and embezzlement or fraudulent or negligent loss of state property by public officials or individuals.”

Rolling text (A/AC.261/3/Rev.1)

*“Article 22
“Misappropriation of property by a public official*

“Option 1⁵

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the misappropriation or removal of any movable or immovable property, public or private funds or securities or any other object entrusted to a public official by virtue of his or her position or mission.

“Option 2

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper use by a public official or a person who performs public functions, for his or her own benefit or for that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of or in the performance of his or her functions.⁶

⁵ During the first reading of the draft text, at the first session of the Ad Hoc Committee, most delegations expressed their preference for this option to become the basis for further work and for combining the concepts contained in article 27. In particular, the need for clarifications in terminology were highlighted. One delegation expressed misgivings about the inclusion of such an article, but indicated that if there was consensus for inclusion, this option could form the basis for further work, with the insertion of a clause indicating that the criminalization should be in accordance with basic principles of domestic law. Other delegations indicated that option 2 contained many useful elements that should be incorporated into the final formulation.

⁶ Belarus suggested that the following text, taken from article 28 (Improper benefits), should be inserted at the end of option 1 (see A/AC.261/L.91):

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.”

“Option 3

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the exploitation, misuse, misappropriation, diversion and embezzlement or fraudulent or negligent loss of state property by public officials or individuals.

“Article 27
“*Diversion of property*⁷

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the diversion by a public official, for his or her own benefit or for that of a third party, of any movable or immovable property, monies or securities belonging to the State or to an individual, that such official has received by virtue of his or her position for purposes of administration or custody or for other reasons.”

Third session: Vienna, 30 September-11 October 2002

Australia, Botswana, Cameroon, Canada, New Zealand and the United Kingdom of Great Britain and Northern Ireland (A/AC.261/L.137)

“Article 22
“*Misappropriation and other misconduct 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:

“(a) The misappropriation by a public official of any property, public or private funds or securities or any other object entrusted to the public official by virtue of his or her position or duties;

“(b) Any other serious misconduct in office by a public official designed to secure a benefit for himself or herself or for another person or entity.”

⁷During the first reading of the draft text, at the first session of the Ad Hoc Committee, this article was considered together with article 22. It was suggested that an effort should be made to combine both articles (see, for example, the proposal of South Africa, contained in document A/AC.261/L.47). Option 2 of this article, which had been submitted by Colombia (A/AC.261/IPM/14), was deleted, as it was identical to option 3 of article 22.

Rolling text (A/AC.261/3/Rev.2)*“Article 22⁸*

“Embezzlement, misappropriation, [other] diversion or [misuse] 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,]⁹ [or the misuse],¹⁰ 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.”

Notes by the Secretariat

1. Article 27 was deleted.

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)***“Article 22¹¹*

“Embezzlement, misappropriation or other diversion¹² 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.”

Notes by the Secretariat

2. At its fifth session, the Ad Hoc Committee provisionally approved article 22 of the draft convention (see A/AC.261/16, para. 25).

⁸ 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 an informal working group established following the second reading of the draft text of articles 22 and 27, at the third session of the Ad Hoc Committee, and coordinated by Canada. The Ad Hoc Committee did not review this text after its distribution. This revised version would entail the deletion of article 27.

⁹ It would appear from the discussion in the informal working group that “diversion” is understood in Spanish-speaking countries as separate from “embezzlement” and “misappropriation”, while in other countries “diversion” is covered by these terms.

¹⁰ “Misuse” was regarded by a number of countries to be a different and wider concept than embezzlement, misappropriation or diversion and not to meet the standard for criminalization.

¹¹ It was agreed that the *travaux préparatoires* would indicate that this article is not intended to require the prosecution of *de minimis* offences.

¹² “Diversion” is understood in some countries as separate from “embezzlement” and “misappropriation”, while in others “diversion” is covered by these terms.

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 17

Embezzlement, misappropriation or other diversion 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.

C. Interpretative notes

The interpretative notes on article 17 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 29-30) are as follows:

(a) This article is not intended to require the prosecution of *de minimis* offences;

(b) The term “diversion” is understood in some countries as separate from “embezzlement” and “misappropriation”, while in others “diversion” is intended to be covered by or is synonymous with those terms.

Article 18. Trading in influence

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 21
“Trading in influence*

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to induce a public official or any other person to 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 decision for the original instigator of the act or for any other person;

“(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse of 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 for himself or herself or for any other person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

“Option 2²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence trading in influence, which shall be understood as:

“(a) The use of the ability of a public official to exercise improper influence on decision-making within or outside the government apparatus; or

“(b) The exercise of coercive influence on third parties for the purpose of acquiring an advantage for oneself or for third parties.

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“Option 3³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the improper use by a public official, for his or her own benefit or for that of a third party, of influence derived from the discharge of office or performance of functions with a view to obtaining an advantage from another public official in a matter with which the latter is dealing or has to deal.

“Option 4⁴

“Each State Party shall take the necessary legislative and other administrative measures in order to criminalize, in accordance with basic principles of its domestic law the promising, giving or offering, when committed intentionally, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert improper influence over the decision-making of any person, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

“Option 5⁵

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, directly or indirectly offering, giving or promising any undue advantage to any person who declares or confirms that he or she can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether the undue advantage is for himself or herself or for another person; also soliciting or receiving an offer or a promise in exchange for such influence.

*“Article 35²**“Traffic in influence by a private person*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence any act or omission by any person who, personally or through a third party or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain.”

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁵ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Rolling text (A/AC.261/3/Rev.1)

*“Article 21
“Trading in influence⁶*

“Option 1⁷

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to induce a public official or any other person to 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 decision for the original instigator of the act or for any other person;⁸

“(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse⁹ of 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 for himself or herself or for any other person,¹⁰ whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.^{11, 12}

“Option 2¹³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence trading in influence, which shall be understood as:

“(a) Any act by a public official performed by that person personally or through a third party with a view to assisting or procuring the illicit negotiation or conclusion of public administration transactions inconsistent with the responsibilities inherent in his or her public office; and

“(b) Any act by any person designed to bring about the illicit conduct of a public official or serving to assist or procure the conduct referred to in subparagraph (a) of this article.

⁶ During the first reading of the draft text, at the first session of the Ad Hoc Committee, several delegations raised the issue of whether the title was appropriate and suggested that it should read “Misuse of influence”. Other delegations stated that that was a term of art and should not be changed.

⁷ Text taken from the proposal submitted by France (A/AC.261/IPM/10). During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations expressed preference for this option as the basis for further work. Several delegations highlighted the subtleness of the concept and the subsequent need for careful consideration in order to arrive at the required clarity in the final formulation, which would make this article viable. Some delegations expressed serious misgivings about the inclusion of this article. Still others expressed their preference for not including such a provision, but indicated that if there was consensus for inclusion, care should be taken to avoid inadvertent interference with legitimate political activity.

⁸ One delegation suggested the insertion of the words “or entity” after the words “any other person”.

⁹ Some delegations suggested the replacement of the word “abuse” with the words “misuse” or “improper use”.

¹⁰ One delegation suggested the insertion of the words “or entity” after the words “any other person”.

¹¹ Some delegations suggested deletion of the last part of this sentence. Other delegations advocated its retention, as it contained an important element of the provision.

¹² This provision is based on article 12 of the Criminal Law Convention, with considerable changes. Criminalization, which deals both with trading in active influence and trading in passive influence, is deliberately confined to actions committed against or for an administration or a public authority of the State party. At this stage, trading in influence (active and passive) for a foreign public authority had not been taken into account.

¹³ Revised text submitted by Mexico at the first session of the Ad Hoc Committee (A/AC.261/L.39).

“Option 3

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the improper use by a public official, for his or her own benefit or for that of a third party, of influence derived from the discharge of office or performance of functions with a view to obtaining an advantage from another public official in a matter with which the latter is dealing or has to deal.

“Option 4

“Each State Party shall take the necessary legislative and other administrative measures in order to criminalize, in accordance with basic principles of its domestic law the promising, giving or offering, when committed intentionally, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert improper influence over the decision-making of any person, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

“Option 5

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, directly or indirectly offering, giving or promising any undue advantage to any person who declares or confirms that he or she can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether the undue advantage is for himself or herself or for another person; also soliciting or receiving an offer or a promise in exchange for such influence.

*“Article 35**“Traffic in influence by a private person*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence any act or omission by any person who, personally or through a third party or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain.”

*Third session: Vienna, 30 September-11 October 2002**Rolling text (A/AC.261/3/Rev.2)*

“Article 21¹⁴

“Trading in influence

“Each State Party shall [adopt] [consider adopting] such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to induce a public official or any other person to 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] decision for the original instigator of the act or for any other person;

“(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse of 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 for himself or herself or for any other person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.”

Notes by the Secretariat

1. Article 35 was deleted.

¹⁴The 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 an informal working group established following the second reading of the draft text, at the third session of the Ad Hoc Committee (A/AC.261/L.147). The Ad Hoc Committee did not review this text after its distribution.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)****“Article 21¹⁵**“Trading in influence*

“States Parties shall consider adopting¹⁶ such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(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 decision¹⁷ 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;¹⁸

“(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.”

¹⁵The 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.

¹⁶During the fifth session of the Ad Hoc Committee, a number of delegations expressed 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 the significantly broad scope of the article.

¹⁷During the fifth session of the Ad Hoc Committee, several delegations expressed the view that this phrase should be deleted.

¹⁸During the fifth session of the Ad Hoc Committee, Chile proposed an alternative formulation for this subparagraph (A/AC.261/L.188), which would read as follows:

“(a) The promising, offering or giving, directly or indirectly, to a public official or any other person of an undue advantage, whether or not it is of economic significance, or the use of the official by means of deceit, in order that he or she 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 decision for the original instigator of the act or for any other person, whether or not the influence is exerted and whether or not the results of the supposed influence are obtained;”

Sixth session: Vienna, 21 July-8 August 2003***Libyan Arab Jamahiriya (A/AC.261/18)****“Article 21**“Abuse of [Trading in] influence and instigation thereof*

“Each State Party shall adopt [consider adopting] such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) 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 any other 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 a public authority of the State Party any undue advantage or any favourable decision for himself or herself or for any other person;

“(b) The promising, offering or giving to a public official or to any other person of any undue advantage, directly or indirectly, in order to induce 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 decision for the original instigator of the act or for any other person;

“(c) The provisions of subparagraphs (a) and (b) above shall apply whether or not the influence is exerted and whether or not the influence leads to the intended result.”

Rolling text (A/AC.261/3/Rev.5)*“Article 21**“Trading in influence*

“Each State Party shall consider adopting 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 any other person, directly or indirectly, of an 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 public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

“(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an 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 an undue advantage.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 21 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 18
Trading in influence*

Each State Party shall consider adopting 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 any other person, directly or indirectly, of an 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 public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an 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 an undue advantage.

Article 19. Abuse of functions

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 24
“Abuse of functions*

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the abuse of functions or any act or omission in the discharge of his or her functions by a public official, international civil servant or a person who performs public functions, for the purpose of obtaining illicit benefits for himself or herself or for a third party.

“Option 2²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The issuance of a decision, resolution, ruling or judgement by a public official, in manifest violation of the law, and the failure or refusal to perform, or delay in performing, an act incumbent upon an official by virtue of his or her functions;

“(b) The abuse of office or functions by a public official through the performance of public functions other than those incumbent upon him or her by law.

“Option 3³

“Each State Party shall take the necessary legislative and other administrative measures to criminalize, in accordance with basic principles of its domestic law, requesting or accepting a benefit by a public official under the assumption that the official shall directly or indirectly perform a duty that is not within his or her capacity or something the official is not authorized to perform or not to perform.”

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

Rolling text (A/AC.261/3/Rev.1)

*“Article 24
“Abuse of functions”^{4, 5}*

“Option 1⁶

“Each State Party shall adopt such legislative and other measures as may be necessary to establish [in accordance with basic principles of its domestic law] as criminal offences the abuse of his or her functions or any act or omission 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 illicit benefits for himself or herself or for a third party.

“Option 2

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The issuance of a decision, resolution, ruling or judgement by a public official, in manifest violation of the law, and the failure or refusal to perform, or delay in performing, an act incumbent upon an official by virtue of his or her functions;

“(b) The abuse of office or functions by a public official through the performance of public functions other than those incumbent upon him or her by law.”

Third session: Vienna, 30 September-11 October 2002

Algeria (A/AC.261/L.95)

*“Article 24
“Abuse of functions”*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish [in accordance with basic principles of its domestic law] as criminal offences the abuse of his or her functions or position by performing or failing to perform an act in the discharge of those functions by a public official,

⁴ At the first session of the Ad Hoc Committee, Malaysia proposed that this article read as follows (A/AC.261/L.42):

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with basic principles of its domestic law, the use by a public official of his or her office or position for corruption when he or she takes any decision or action in relation to any matter in which such official or any relative or associate has an interest, whether direct or indirect, in order to obtain an undue advantage.”

⁵ During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations expressed doubt about the advisability or feasibility of including this article in the draft convention. Others were of the view that the draft convention should include an article criminalizing this type of conduct. However, several delegations indicated that for this to succeed careful consideration and formulation would be necessary. The concept existed in several legal systems, but further consideration was necessary to determine whether it commanded sufficient common understanding at the international level, which would be a requisite for inclusion in the draft convention. Several delegations suggested amending the title to read “Abuse of authority”, “Abuse of power”, “Abuse of trust” or “Abuse of position”.

⁶ During the first reading of the draft text, at the first session of the Ad Hoc Committee, Turkey indicated that it considered option 1 sufficient and withdrew its previous option 3 of this article, on condition that the clause of criminalization in accordance with basic principles of domestic law be included.

international civil servant or a person who performs public functions, for the purpose of obtaining illicit benefits for himself or herself or for a third party.”

Rolling text (A/AC.261/3/Rev.2)

“*[Article 24*
“Abuse of [functions] [power]”

“Each State Party shall adopt such legislative and other measures as may be necessary to establish [in accordance with basic principles of its domestic law] as criminal offences the abuse of his or her functions [or position by performing or failing to perform an act] [or any act or omission] 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 illicit benefits for himself or herself or for a third party.]”

Notes by the Secretariat

1. The text above reflects the new version of article 24 of the draft convention resulting from its second reading, at the third session of the Ad Hoc Committee.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“*[Article 24⁷*
“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.]”

⁷ 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.

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

*“Article 24⁸
“Abuse of functions*

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 24 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

*Article 19
Abuse of functions*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

C. Interpretative notes

The interpretative note on article 19 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 31) is as follows:

This article may encompass various types of conduct, such as improper disclosure by a public official of classified or privileged information.

⁸ It was agreed that the *travaux préparatoires* would indicate that this article may encompass various types of conduct, such as improper disclosure by a public official of classified or privileged information.

Article 20. Illicit enrichment

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 25
“Unlawful enrichment*

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the illicit enrichment or the increase in the assets of a public official that significantly exceeds his or her legitimate income during the performance of his or her functions and that he or she cannot reasonably justify.

“Option 2²

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the unjustified increase in the wealth of a public official during his or her service with the State or within two years following separation from such service.

“2. Subject to their constitutions and fundamental principles of their domestic law, States Parties that have not yet done so shall adopt such measures as may be necessary to establish as criminal offences transnational bribery and illicit enrichment, which shall be considered acts of corruption for the purposes of this Convention.

“Option 3³

“Each State Party shall adopt all legal and administrative measures necessary in its domestic legislation to regard as illicit enrichment, and thereby to criminalize, any significant increase in the assets and income of any public official

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). The Czech Republic proposed that an additional sentence be added at the end of paragraph 1 of option 2 to read as follows (A/AC.261/L.99): “In the event that evidence of a link between the intentional commission of a crime and the unjustified wealth of a public official cannot be obtained, each State Party shall further adopt measures to provide for the immediate imposition of progressive taxation on that portion of the wealth of the public official that cannot be justified.”

³ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

that is not in conformity with his or her legitimate earnings derived from his or her duties and that has no other reasonable explanation as to its source.

“Option 4⁴

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) Systematic or methodical illicit enrichment of a public official of unlawful financial proceeds obtained through a series or combination of corrupt acts as defined in articles [...] of this Convention, penalties for which may vary according to the gravity of the offence, and as may be determined by the participating States;

“(b) Failure of a public officer to explain the acquisition, during his or her incumbency, of an amount of property that is manifestly out of proportion to his or her salary as a public official and other lawful sources of income, in which case, such property shall be presumed to have been acquired unlawfully.”

Notes by the Secretariat

1. During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations indicated that they faced serious difficulties, often of a constitutional nature, with the inclusion of the concept of the reversal of the burden of proof. Some delegations expressed understanding for the desire to include the concept in the array of measures against corruption, but, in view of the difficulties related to the reversal of the burden of proof in criminal law, suggested that the article be modified, made less binding and moved to the chapter on preventive measures in order to allow States to adopt administrative measures embodying the concept contained in the article. Another possible solution offered was to base such an article on the comparable article of the Inter-American Convention against Corruption of the Organization of American States (see E/1996/99). Many other delegations wished to retain this article in this chapter, in view of the potential efficiency of criminal measures in this area. One delegation clarified that the concept reflected in this article actually referred to the rules on evaluation of evidence and not necessarily to the shifting of the burden of proof, proof being the result of evidence and evidence being the medium of proof. The Vice-Chairman with responsibility for this chapter encouraged delegations to conduct informal consultations in order to find appropriate and acceptable solutions to this problem.

2. At the first session of the Ad Hoc Committee, South Africa proposed that this article read as follows (A/AC.261/L.43):

“Unexplained wealth

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the increase in wealth of a public official that significantly exceeds his or her present or past legitimate income, unless he or she gives a satisfactory explanation as to how such wealth was acquired.”

⁴ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

3. At the first session of the Ad Hoc Committee, Malaysia proposed that this article read as follows (A/AC.261/L.44):

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with basic principles of its domestic law, the illicit enrichment or unjustified increase in the assets of a public official that is manifestly out of proportion to his or her legitimate income during his or her tenure as a public official that he or she cannot reasonably justify.”

4. At the first session of the Ad Hoc Committee, Pakistan proposed that the criminalization of illicit enrichment be made optional, thus providing a way out for States parties that would consider its provisions to be in contradiction with their domestic law. Furthermore, in order to address any ambiguity that might arise for the use of the term “assets beyond means” in the existing text, Pakistan suggested that the application of the article should be qualified by setting a minimum threshold for assets below which the article would not be applicable, with the determination of such threshold left to the discretion of States parties. Pakistan also pointed out that the existing formulation of article 25 was restrictive because it did not cover cases where illicit enrichment, although a result of acts performed during the holding of office, might take place after retirement.

Third session: Vienna, 30 September-11 October 2002

Algeria (A/AC.261/L.95)

“Article 25 “Unlawful enrichment

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the illicit enrichment or unjustified increase in the assets, wealth or income of a public official out of proportion to his or her legitimate income obtained through the performance of his or her functions or from other lawful sources.”

Rolling text (A/AC.261/3/Rev.2)

*“Article 25⁵
“Illicit enrichment⁶”*

“1. Subject to its Constitution and the fundamental principles of its legal system, each State Party shall take [consider taking] the necessary measures to establish under its laws as an offence the illicit enrichment or a significant increase in the assets of a government official that he or she cannot reasonably explain in relation to his or her lawful earnings during the performance of his or her functions.

“2. Among those States Parties that have established illicit enrichment as an offence, such offence shall be considered an act of corruption for the purposes of this Convention.⁷

“3. Any State Party that has not established illicit enrichment as an offence shall [insofar as its laws permit,⁸] provide assistance and cooperation with respect to this offence as provided for in this Convention.”⁹

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)**

*“Article 25¹⁰
“Illicit enrichment”*

“Subject to its constitution and the fundamental principles of its legal system, each State Party shall take [consider taking]¹¹ the necessary measures to establish under its laws as an offence, when committed intentionally,¹² illicit enrichment,

⁵ The text of this proposal is a revised version submitted, pursuant to a request by the Chairman, by Argentina, which coordinated an informal working group (see A/AC.261/L.152). The Ad Hoc Committee did not review this proposal after its distribution.

⁶ 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) (“Each State Party shall, in accordance with its domestic legal system, establish whether any of its public officials or former public officials who have unexplained assets have committed the criminal act of tax evasion.”), which was not taken up by the informal working group. The Philippines agreed to withdraw its original proposal in option 4 of article 25 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 text of the proposed new article was as follows:

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the unlawful massive enrichment of a public official by the commission of a combination or a series of criminal acts, or both, in the aggregate amount or of a total value to be determined by each State Party.

“2. Any State Party that has not established ‘plunder’ as an offence shall, in accordance with its domestic legal principles, provide assistance and cooperation with respect to this offence as provided for in this Convention.”

The proposal (A/AC.261/L.151) was not discussed in the informal working group.

⁷ Some delegations were of the view that paragraph 2 might not be necessary.

⁸ Many delegations were of the view that the words between brackets in paragraph 3 should be deleted.

⁹ Many delegations were in favour of deleting paragraph 3 in its entirety.

¹⁰ 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 (see A/AC.261/L.183). The Ad Hoc Committee did not review this proposal after its distribution.

¹¹ The informal working group felt that the question of the mandatory or optional nature of the article should be decided by the plenary.

¹² 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.

that is,¹³ a significant¹⁴ increase in the assets of a public¹⁵ official that he or she cannot reasonably explain in relation to his or her lawful income.^{16, 17}

“[Paragraph 2 was deleted.¹⁸]

“[Paragraph 3 was deleted.¹⁹”

Sixth session: Vienna, 21 July-8 August 2003

Sri Lanka (A/AC.261/L.219)

“Article 25 “Illicit enrichment

“1. Subject to the constitution and the fundamental principles of the legal system, each State Party may take the necessary measures to establish under its laws as an offence, when committed intentionally, illicit enrichment arising out of the commission of the offences specified in this Convention.

“2. In paragraph 1 of this article, the term ‘illicit enrichment’ shall mean a disproportionate increase in the assets of a public official that cannot be reasonably explained in relation to his or her lawful income.”

Rolling text (A/AC.261/3/Rev.5)

“Article 25 “Illicit enrichment

“Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”

¹³The 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.

¹⁴The 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.

¹⁵The 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.

¹⁶The 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.

¹⁷The remaining phrase in document A/AC.261/3/Rev.3 was deleted since it was possible for a public official to have legitimate income that did not arise from the performance of his or her functions.

¹⁸Paragraph 2 was deleted because it arose from a distinction in the Inter-American Convention against Corruption, that was not reflected in the draft convention.

¹⁹Paragraph 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.

Notes by the Secretariat

5. At its sixth session, the Ad Hoc Committee provisionally approved article 25 of the draft convention (see A/AC.261/22, para. 22).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 20
Illicit enrichment*

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21. Bribery in the private sector

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 32

“Criminalization of corruption in the private sector

“Option 1¹

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of business activity:

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

“(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in the exercise of his or her duties.

“2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with paragraph 1 of this article.

“Option 2²

“Each State Party shall take such measures as may be appropriate to deter and combat corruption in the private sector. To that end, each State Party shall, inter alia, establish as criminal offences the following conduct:

“(a) The solicitation or acceptance by any natural person who works or provides services in entities of the private sector, directly or indirectly, of an undue advantage, for himself or herself or for another person, in order that such person act or refrain from acting in the exercise of his or her obligations in relation to an

¹Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

²Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

economic, financial or commercial transaction, which results in harm to that entity of the private sector; and

“(b) The intentional promise, offering or giving to a natural person who works or provides services in entities of the private sector, directly or indirectly, of any article of monetary value or other undue advantage, for himself or herself or for another person or entity, as a gift, favour, promise or advantage, in exchange for which that person performs or fails to perform any act in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector.”

Notes by the Secretariat

1. During the first reading of the draft text, at the first session of the Ad Hoc Committee, most delegations indicated that the convention would be incomplete without a provision addressing private sector corruption and advocated inclusion of this article, as it addressed a crucial matter of special relevance in the era of globalization, with ramifications for an increasing number of spheres of economic and social activity. All those in favour of inclusion expressed their preference for option 1, enhanced however with some elements from option 2, such as the concept of harm. Some delegations expressed serious misgivings about the feasibility of efforts to introduce an international obligation for criminalization in this area. While recognizing the importance of the issue of private sector corruption, those delegations expressed concern about the potential of a provision such as this to interfere with normal economic activity through the application of criminal law. Some delegations suggested that efforts to arrive at common ground might be based on the introduction of the concept of protection of the public interest. In any event, further deliberations were deemed necessary on the concept of private sector corruption, as well as on the meaning of the term “private sector” and the shifting relationships between the private and the public sectors. It was also pointed out that this discussion would be related to the discussion on the definition of the term “public official”.

2. During the first reading of the draft text, at the first session of the Ad Hoc Committee, one delegation suggested that the title of the article should read “Criminalization of corruption by the private sector”.

3. At the first session of the Ad Hoc Committee, Austria and the Netherlands revised their proposal on option 1 of the article and indicated that this article should be placed after article 19 bis, while paragraph 2 should be considered in conjunction with the article on complicity.

4. At the first session of the Ad Hoc Committee, Pakistan proposed the addition of the words “that affects public interest” after the words “in the course of business activity” (option 1, paragraph 1).

5. At the third session of the Ad Hoc Committee (Vienna, 30 September-11 October 2002), Austria, Mexico and the Netherlands proposed a consolidated text for article 32 (see A/AC.261/L.119) to read as follows:

*“Article 32
[Criminalization of] corruption in the private sector*

“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 business activity:

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

“(b) The solicitation or acceptance, directly or indirectly, of any undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector].”

6. At the third session of the Ad Hoc Committee, Turkey proposed the insertion of a new paragraph after paragraph 2 of option 1 of article 32 to read as follows (see A/AC.261/L.89):

“3. Each State Party shall consider adopting legislative measures to ensure that high-level officials of a private sector institution are punished with the penalties foreseen for the crime of embezzlement by public officials under similar circumstances whenever the private sector institution concerned is conducting a financial activity or whenever the acts committed by such private sector officials affect public economic interests. The private sector institutions covered by this article should include, but should not necessarily be limited to, banks and private finance institutions operating in the areas of borrowing and utilization of money, assets or instrumentalities belonging to private persons.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“Article 32³
Corruption in the private sector*

“1. Each State Party shall [consider adopting] adopt such legislative and other measures as may be necessary to establish as criminal offences, when

³During 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.

committed intentionally [by major entities] [in the course of business activity] [and when public interests are affected]:⁴

“(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector];⁵

“(b) The solicitation or acceptance, directly or indirectly, of any undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector].⁵

“[2. Each State Party shall also consider adopting legislative measures to ensure that high-level officials of a private sector institution are punished with the penalties foreseen for the crime of embezzlement by public officials under similar circumstances whenever the private sector institution concerned is conducting a financial activity or whenever the acts committed by such private sector officials affect public economic interests. The private sector institutions covered by this article should include, but should not necessarily be limited to, banks and private finance institutions operating in the areas of borrowing and utilization of money, assets or instrumentalities belonging to private persons.]”⁶

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 32”

“Corruption in the private sector

“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

⁴ A number of delegations indicated that the scope of this article would need to be limited by some link to the public interest.

⁵ Additional text proposed by Mexico.

⁶ Text proposed by Turkey.

⁷ 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 (see below). The Ad Hoc Committee did not review this revised text after its distribution. Saudi Arabia proposed to amend article 32 to read as follows (see A/AC.261/L.179):

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence any act of corruption covered by this Convention when committed intentionally by any person who owns, directs or works in any capacity for a private sector entity.”

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 act or refrain from acting in breach of his or her duties [, which results in harm to that entity].”⁸

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 32

“Bribery in the private sector

“Each State Party shall consider adopting 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 activities:

“(a) The promise, 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, in breach of his or her duties, act or refrain from acting;

“(b) The solicitation or acceptance, directly or indirectly, of an 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, in breach of his or her duties, act or refrain from acting.”

Notes by the Secretariat

7. At its sixth session, the Ad Hoc Committee provisionally approved article 32 of the draft convention, as amended, including in its title (see A/AC.261/22, para. 22).

8. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁸ 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) (see also under article 22 of the convention).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 21

Bribery in the private sector

Each State Party shall consider adopting 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 activities:

(a) The promise, 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, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an 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, in breach of his or her duties, act or refrain from acting.

Article 22. Embezzlement of property in the private sector

A. Negotiation texts

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 32¹

“Corruption in the private sector

“1. Each State Party shall [consider adopting] adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally [by major entities] [in the course of business activity] [and when public interests are affected]:²

“(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector];³

“(b) The solicitation or acceptance, directly or indirectly, of any undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector].³

“[2. Each State Party shall also consider adopting legislative measures to ensure that high-level officials of a private sector institution are punished with the penalties foreseen for the crime of embezzlement by public officials under similar circumstances whenever the private sector institution concerned is conducting a financial activity or whenever the acts committed by such private sector officials affect public economic interests. The private sector institutions covered by this article should include, but should not necessarily be limited to, banks and private

¹ 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.

² A number of delegations indicated that the scope of this article would need to be limited by some link to the public interest.

³ Additional text proposed by Mexico.

finance institutions operating in the areas of borrowing and utilization of money, assets or instrumentalities belonging to private persons.]”⁴

Notes by the Secretariat

1. At the fifth session of the Ad Hoc Committee (Vienna, 10-21 March 2003), 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 on “Embezzlement of property in the private sector” after article 32 on “Corruption in the private sector” (see A/AC.261/L.201) (see also under article 21 of the convention). The text of the proposed new article was as follows:

“Article 32 bis “Embezzlement of property in the private sector

“Each State Party may consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of financial activities,⁵ embezzlement, by a person who directs or works, in any capacity, in a private sector entity, of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position, in any case where public interests are affected, and to consider subjecting private sector embezzlement to punishments of proportionate severity as those applicable to public sector embezzlement.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 32 bis “Embezzlement of property in the private sector

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved the insertion of a new article 32 bis in the draft convention (see A/AC.261/22, para. 22) to reflect the content of paragraph 2 of article 32 contained in document A/AC.261/3/Rev.3.

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the

⁴ Text proposed by Turkey.

⁵ Thailand suggested that the provisions of this article should also apply to economic and commercial activities.

convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 22

Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23. Laundering of proceeds of crime

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 33

“Criminalization of money-laundering of proceeds of corruption

“Option 1¹

“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 and such intention may reasonably be deduced from the circumstances:

“(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.

“2. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

¹ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), France (A/AC.261/IPM/10) and Pakistan (A/AC.261/IPM/23) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“3. For purposes of implementing or applying paragraph 1 of this article, each State Party shall include as predicate offences all offences established in accordance with this Convention.²

“Option 2³

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

“(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

“(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction 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;

“(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

“(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

“(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

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

“(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article [...] [Criminalization of corruption] of this Convention;

“(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

“(c) For the purposes of paragraph 1 of this article, 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 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;

² With regard to the criminalization of money-laundering, France proposed the wholesale incorporation of all the relevant provisions of article 6 of the Organized Crime Convention. France was of the view that the proposal submitted by Austria and the Netherlands could therefore be supplemented by the inclusion of the provisions of article 6, paragraph 2, of that instrument.

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“(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; and

“(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

“Option 3⁴

“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.

“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 offences set forth in this Convention. 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;

“(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 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;

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“(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;

“(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

“Option 4⁵

“Each State Party shall adopt all legislative and administrative measures necessary to criminalize the laundering of all kinds of proceeds derived from the crimes set forth in articles [...] [articles on criminalization] of this Convention.

“Option 5⁶

“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.

“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 serious crime as defined in article [...] [Use of terms] of this Convention and the offences established in accordance with article [...] [Acts of corruption] of this Convention. 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 corrupt practices;

“(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 the State Party shall constitute predicate offences only when the relevant conduct is a

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁶ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

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;

“(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

“Option 6⁷

“Each State Party shall adopt such legislative and other measures as may be necessary to establish the following as criminal offences:

“(a) Purchasing the immovable property from the proceeds of corruption and continuing to retain it under any name;

“(b) Maintaining the bank accounts, investments and any other form of property in an attempt to hide the proceeds of corruption and continuing to retain them under any name.”

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 33

“Criminalization of money-laundering of proceeds of corruption⁸

“Option 1⁹

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

“(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

“(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction 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;

⁷ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

⁸ During the first reading of the draft text, some delegations proposed to amend the title of this article to read “Criminal acts related to corruption”.

⁹ Proposed by Mexico (A/AC.261/IPM/13).

“(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

“(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

“(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

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

“(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article [...] [Criminalization of corruption] of this Convention;

“(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

“(c) For the purposes of paragraph 1 of this article, 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 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; and

“(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

“Option 2¹⁰

“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;

¹⁰Proposed by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, most delegations expressed their support for this option.

“(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.

“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;¹¹

“(b) Each State Party shall include as predicate offences all offences established in accordance with this Convention;¹²

“(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 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;

“(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.”

¹¹During the first reading of the draft text, some delegations expressed concern about the broad range of predicate offences envisaged by this paragraph as drafted. Those delegations held the view that only serious predicate offences should be covered. Some other delegations expressed their preference for a broad range of predicate offences.

¹²The text of this subparagraph appeared previously as paragraph 3 of option 1, which was a proposal submitted by Austria and the Netherlands. During the first reading of the draft text, Austria and the Netherlands proposed the inclusion of this sentence in the proposal of Colombia. Colombia agreed with this proposal. Consequently, Austria and the Netherlands withdrew the proposal contained in option 1.

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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;

“[(iii) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.]¹³

“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;¹⁴

“[(b) Each State Party shall include as predicate offences all offences established in accordance with this Convention;]

“(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 criminal offence under the domestic law of the State where it is committed and

¹³Some delegations expressed concern about establishing what appeared to be a negligence standard for money-laundering.

¹⁴As already mentioned, during the first reading of the draft text, some delegations expressed concern about the broad range of predicate offences envisaged by this paragraph as drafted. Those delegations held the view that only serious predicate offences should be covered. Some other delegations expressed their preference for a broad range of predicate offences. These positions were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. It was decided that the issue should be resolved after clarity had been achieved regarding the contents of the criminalization articles of the future convention.

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;]¹⁵

“[(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.]”¹⁶

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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;

¹⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this subparagraph was not necessary. Some other delegations argued in favour of its retention.

¹⁶During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this subparagraph would not be necessary if article 30 bis was agreed upon.

“(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;¹⁷

“(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 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.]”

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 33 of the draft convention, except paragraph 2 (b) (see A/AC.261/16, para. 25).

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

Article 33

“Laundering of proceeds of crime

“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;

¹⁷The 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 (see A/AC.261/L.189). The Ad Hoc Committee did not review this proposal after its distribution.

“(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.

“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 at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

“(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 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.”¹⁸

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 33, paragraph 2 (b), of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

¹⁸It was agreed that the *travaux préparatoires* would indicate that money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and that a prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 38 ter, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 23

Laundering of proceeds of crime

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.

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 at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(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 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.

C. Interpretative notes

The interpretative note on article 23 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 32) is as follows:

Money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and a prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 28, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances.

Article 24. Concealment

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 23
“Concealment*

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the concealment, possession or transmission of movable property or funds or the serving as an intermediary in the transmission of such property or funds, when the person involved is aware that such movable property or funds are the result of one of the offences established in accordance with this Convention.

“Option 2²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the fraudulent use or concealment of property derived from any of the acts referred to [in this article].

“Option 3³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish the following as criminal offences:

“(a) Purchasing immovable property from the proceeds of corruption and continuing to retain it under any name;

“(b) Maintaining bank accounts, investments and any other form of property that attempts to hide the proceeds of corruption and continuing to retain it under any name.”

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

A/AC.261/3/Rev.1

“Article 23
“Concealment⁴”

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the concealment, [retention,]⁵ possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such property or funds, when the person involved is aware that such movable property or funds are the result of one of the offences established in accordance with this Convention.”⁶

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“Article 23
“Concealment⁷”

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally [, following the commission of other offences established in accordance with this Convention without participating in these offences,]⁸ the concealment, [retention,] possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such property or funds, when the person involved is aware that such movable property or funds are the result of one of the offences established in accordance with this Convention.”⁹

⁴ Text taken from the proposal submitted by France (A/AC.261/IPM/10). Colombia withdrew its previous option 2 of this article. During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations were of the view that this article should be deleted, as the matter was covered by or the concept should be treated in conjunction with article 33. Other delegations were of the view that the concept expressed in this article was fundamentally different from money-laundering and there was need to have a separate article in the convention.

⁵ Pakistan withdrew its previous option 3 of this article, on condition that the word “retention” be added in this draft text.

⁶ Some delegations proposed the deletion of the last part of this sentence concerning awareness. Other delegations advocated its retention, as it formed a constituent part of the concept. Pakistan indicated that the withdrawal of option 3 of this article (A/AC.261/3 (Part II)) was conditional on the deletion of this phrase and that, in view of its retention in the text, it would like option 3 to remain for consideration by the Ad Hoc Committee at the second reading of the draft text. The proposal by Pakistan read as follows:

“Each State Party shall adopt such legislative and other measures as may be necessary to establish the following as criminal offences:

“(a) Purchasing immovable property from the proceeds of corruption and continuing to retain it under any name;

“(b) Maintaining bank accounts, investments and any other form of property that attempts to hide the proceeds of corruption and continuing to retain it under any name.”

⁷ During the second reading of the draft text, at the third session of the Ad Hoc Committee, most delegations wished to retain this article, because they considered it to contain concepts fundamentally different from money-laundering. Many delegations were of the view that this article should be deleted, as the matter was covered by or the concept should be treated in conjunction with article 33. A decision on this matter would be taken after consideration of article 33.

⁸ Proposed by Mexico during the second reading of the draft text, at the third session of the Ad Hoc Committee. There was no objection to the proposal.

⁹ During the second reading of the draft text, at the third session of the Ad Hoc Committee, Pakistan proposed the following formulation:

“Concealment and continuous retention

“Each State Party shall take suitable measures to criminalize the continuing act of retaining and concealing the proceeds and properties arising from acts of corruption under the respective national legislation.”

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

*“Article 23
“Concealment¹⁰*

“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.”

Sixth session: Vienna, 21 July-8 August 2003

France (A/AC.261/L.220)

*“Article 23
“Concealment*

“Without prejudice to the provisions of article 33 of this Convention, each State Party shall consider adopting 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 established in accordance with this Convention 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 established in accordance with this Convention.”

Rolling text (A/AC.261/3/Rev.5)

*“Article 23
“Concealment*

“Without prejudice to the provisions of article 33 of this Convention, each State Party shall consider adopting 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 established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.”

¹⁰The 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.

Notes by the Secretariat

1. At its sixth session, the Ad Hoc Committee provisionally approved article 23 of the draft convention (see A/AC.261/22, para. 22).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 24
Concealment*

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting 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 established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25. Obstruction of justice

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 37¹

“Criminalization of obstruction of justice

“1. 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.

“2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 37²

“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

¹ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this article was not necessary.

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.]”

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 37³

“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.”

Notes by the Secretariat

1. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 37 of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

³ Germany wished to place on record its objection to the retention of this article.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 25
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 established in accordance with 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 established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26. Liability of legal persons

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 38
“Liability of legal persons*

“Option 1¹

“1. Each State Party shall take such measures as may be necessary, in accordance with fundamental principles of its domestic law, to establish the liability of legal persons for participation in the crimes set forth in articles [...] [articles on criminalization] of this Convention.

“2. In accordance with the fundamental principles of the domestic law 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.

“Option 2²

“1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

“2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

“Option 3³

“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.

“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.

“Option 4⁴

“Each State Party shall take the penal, legislative or administrative measures necessary in compliance with principles of its domestic law, concerning legal persons, in the event that they contribute to the commitment of crimes set forth in article [...] [Criminalization of corruption] of this Convention.

“Option 5⁵

“1. Each State Party shall adopt measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes such as plunder and for the other offences established in accordance with articles [...] [articles on criminalization] of this Convention.

“2. Subject to the legal principles of the State Party, the liability of the legal persons may be criminal, civil or administrative.

“3. Such liability shall be without prejudice to the criminal liability of the natural or juridical 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.

“5. Each State Party shall take the necessary measures to allow heads and other responsible officials of businesses who have knowledge of or consented to the crime or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud.”

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁵ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Notes by the Secretariat

1. During the first reading of the draft text of the article, at the first session of the Ad Hoc Committee, most delegations expressed their preference for option 3, as it was taken from the Organized Crime Convention and therefore contained already agreed language.

Fourth session: Vienna, 13-24 January 2003***Rolling text (A/AC.261/3/Rev.3)***

*“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.

“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.”

Notes by the Secretariat

2. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 38 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 26
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.
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 27. Participation and attempt

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 20

“Complicity, instigation or attempt

“Option 1¹

“Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

“Option 2²

“1. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation as an accomplice or instigator in an offence established in accordance with articles [...] of this Convention.

“2. Each State Party shall also 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.

“Option 3³

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences participation as the perpetrator, co-perpetrator, instigator, accomplice, abettor or in any other capacity in the commission, attempted commission, association with or conspiracy to commit any of the acts referred to in article [...] [Criminalization of corruption of public officials] of this Convention, as well as conduct by any person who, with knowledge of the aim of an act of corruption, takes an active part in organizing, managing, aiding, abetting, facilitating, authorizing or counselling such acts.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by France (A/AC.261/IPM/10).

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“Option 4⁴

“Each State Party shall adopt the necessary measures to establish as a criminal offence participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of or in any collaboration or conspiracy to commit any of the offences established in accordance with article [...] [Criminalization of corruption of public officials] of this Convention.

“Option 5⁵

“Each State Party shall introduce all legislative and administrative measures necessary in order to consider any contribution to the commitment of a crime set forth in article [...] [Criminalization of corruption of public officials] as taking part in the crime.

“Article 30³

“Equivalence of sanctions

“1. The attempted commission or complicity in the commission of the offence referred to in article [...] [Criminalization of corruption of public officials] of this Convention shall constitute an offence of the same degree, whether an attempt or complicity is involved in the bribing of a public official of a State Party.

“2. Each State Party shall establish custodial sanctions for acts of corruption established in accordance with this article, which shall take account of the seriousness of such acts.

“...”

Notes by the Secretariat

1. During the first reading of the draft text, at the first session of the Ad Hoc Committee, it was pointed out by some delegations that attempt was an intrinsic element of the offences under consideration and, consequently, should not be included in article 20 of the draft convention.

2. During the first reading of the draft text, at the first session of the Ad Hoc Committee, several delegations expressed their support for option 1 of article 20, because of its brevity and origin in the Organized Crime Convention. It was pointed out, however, that whichever option was chosen by the Ad Hoc Committee after further consideration, this article should be placed after all other criminalization articles and be made applicable to all those articles.

3. During the first reading of the draft text, at the first session of the Ad Hoc Committee, one delegation expressed concern regarding the inclusion of the concept of conspiracy in options 3 and 4 of article 20, since it was a concept that remained alien to some legal systems for economic crimes. Other delegations disagreed and pointed out that the Organized Crime Convention contained solutions to the problem of bridging the gap on this issue between different legal systems.

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

4. During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations expressed understanding of and support for the concept of equivalence of sanctions (article 30). However, most delegations suggested that this article could be merged into articles 20 (Complicity, instigation or attempt) and 40 (Prosecution, adjudication and sanctions).

5. During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations suggested a reformulation of paragraph 1 of article 30 drawing on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions⁶ (see, for example, the language proposed by Canada in document A/AC.261/L.46).

6. During the first reading of the draft text, at the first session of the Ad Hoc Committee, many delegations suggested the deletion of paragraph 2 of article 30.

7. At the third session of the Ad Hoc Committee (Vienna, 30 September-11 October 2002), Austria, Mexico and the Netherlands proposed to replace article 30 with option 2 of article 20, deleting the word “also” in the first line of that article (see A/AC.261/L.119). It was thus proposed that article 30 should read as follows:

*“Article 30
“Complicity, instigation or attempt [Complicity in,
instigation of or attempt to commit a crime]”*

“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 as an accomplice or instigator in an offence established in accordance with articles [...] of this Convention.

“2. 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, any attempt to commit an offence established in accordance with articles [...] of this Convention.”

8. At the third session of the Ad Hoc Committee, Yemen proposed the inclusion of an additional option 6 in the draft text of article 20, contained in the rolling text in document A/AC.261/3 (Part II), as follows (see A/AC.261/L.146):

“Each State Party shall adopt such measures as may be necessary to establish as a criminal offence the attempt, complicity and instigation to commit an offence established in accordance with the provisions of this Convention, as well as the provision of any assistance to commit such an offence before, during or after the commission of the offence.”

⁶ *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

9. At the third session of the Ad Hoc Committee, the Russian Federation proposed the following language for article 20 (see A/AC.261/L.127):

*“Article 20
“Complicity and attempt*

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences participation as the perpetrator, co-perpetrator, instigator, accomplice, abettor or in any other capacity in the commission, attempted commission, association with or conspiracy to commit any of the acts referred to in article [...] [Criminalization of corruption of public officials] of this Convention, as well as the organizing, directing, aiding, abetting, facilitating or counselling of such acts.

“2. Each State Party shall also 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 or any seeking of the means to commit an offence or to otherwise create the conditions for the commission of any offence established in accordance with articles [...] of this Convention.”

10. At the third session of the Ad Hoc Committee, Australia, Botswana, Cameroon, Canada, New Zealand and the United Kingdom suggested that article 30 should be amended to read as follows (see A/AC.261/L.137):

*“Article 30
“Complicity, instigation or 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 as an accomplice [or instigator] in an offence established in accordance with articles [...] of this Convention.

“2. 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, any attempt to commit an offence established in accordance with articles [...] of this Convention.”

Fourth session: Vienna, 13-24 January 2003

Notes by the Secretariat

11. Article 20 was replaced with article 30, which was redrafted, moved and renumbered article 38 bis during the fourth session of the Ad Hoc Committee.

Rolling text (A/AC.261/3/Rev.3)*“Article 38 bis**“[Complicity, instigation or attempt [Complicity in, instigation of or attempt to commit a crime]]”*

“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 as an accomplice [assistant] [instigator] [or in any other capacity] in an offence established in accordance with articles [...]⁷ of this Convention.

“2. 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, any attempt to commit an offence established in accordance with articles [...]⁸ of this Convention.]”

“3. 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, the preparation for an offence established in accordance with articles [...]⁹ of this Convention.]”

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)***“Article 38 bis¹⁰**“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,

⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 2 or paragraph 3 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

⁸ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 1 or paragraph 3 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, attention was drawn to the fact that the list of articles for this paragraph might differ from the list to be included in paragraph 1 or paragraph 2 of this article. Such differentiation might become necessary because of the nature of the offences, which might not lend itself equally to the concepts expressed in each of these paragraphs.

¹⁰ It was agreed that the *travaux préparatoires* would 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.

the preparation for an offence established in accordance with articles [...] of this Convention.”

Notes by the Secretariat

12. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 38 bis of the draft convention (see A/AC.261/16, para. 25).

13. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 27 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 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 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 this Convention.

C. Interpretative notes

The interpretative note on article 27 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 33) is as follows:

Paragraph 1

The formulation of paragraph 1 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.

Article 28. Knowledge, intent and purpose as elements of an offence

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 30¹
“Equivalence of sanctions*

“...

“3. When the commission of any of the offences referred to in articles [...] [articles on criminalization] of this Convention requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.”

Notes by the Secretariat

1. During the first reading of the draft text, at the first session of the Ad Hoc Committee, some delegations proposed the deletion of paragraph 3 of article 30 of the draft convention. However, others proposed that this paragraph be reformulated along the lines of paragraph 2 (f) of article 6 of the Organized Crime Convention.

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Third session: Vienna, 30 September-11 October 2002**Rolling text (A/AC.261/3/Rev.2)***“Article 30²**“Knowledge, intent or purpose as elements of an offence*

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

Notes by the Secretariat

2. The article was moved and renumbered article 38 ter during the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003).

3. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations indicated that they might wish to revert to this article at the third reading, as they had doubts about the need to retain it.

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)***“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.”

Notes by the Secretariat

4. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 38 ter of the draft convention (see A/AC.261/16, para. 25).

5. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

² The text of this article was derived from proposals made by Algeria (A/AC.261/L.95) and by Australia, Botswana, Cameroon, Canada, New Zealand and the United Kingdom (A/AC.261/L.137) and Austria, Mexico and the Netherlands (A/AC.261/L.119) at the third session of the Ad Hoc Committee for the inclusion of a new article 30 bis. The text of those proposals mirrored the text of article 6 of the Organized Crime Convention. It was retained so that it could be considered further at the fourth session of the Ad Hoc Committee, in conjunction with article 20.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 28

Knowledge, intent and 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 29. Statute of limitations

A. Negotiation texts

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

*“Article 40 bis¹
“Statute of limitations*

“Each State Party whose domestic law provides for a statute of limitations period applicable to the offences established in accordance with articles [...] [articles on criminalization] of this Convention shall, where appropriate, apply a long statute of limitations period, which shall allow an adequate period of time for the investigation and prosecution of such offences. That period of time shall be longer in cases where the alleged offender is evading the administration of justice.”²

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“Article 40 bis³
“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 a longer period or its suspension where the alleged offender has evaded the administration of justice.”

¹ The text of this article was submitted by Mexico at the second session of the Ad Hoc Committee, following the first reading of article 40 (A/AC.261/L.57).

² At the second session of the Ad Hoc Committee, Haiti expressed its support for the proposal of Mexico and suggested amending the last sentence of the article to read as follows (see A/AC.261/L.60): “That statute of limitations period shall not commence until the alleged offender’s functions have been discontinued or the causes preventing any prosecution have been removed.”

³ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)****“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.”

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 40 bis of the draft convention (see A/AC.261/16, para. 25).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)***Article 29
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 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 30. Prosecution, adjudication and sanctions

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 31¹

“Enhancement of sanctions

“1. Each State Party shall adopt all legislative and administrative measures necessary in order to make possible more severe punishment and to apply effective methods against corruption whenever the crimes listed in articles [...] [articles on criminalization] of this Convention are committed by an organization.

“2. Each State Party, in accordance with its domestic law, shall adopt all the legislative and administrative measures necessary to prosecute and punish persons who take part in the commission of the crimes covered by this Convention and to extend the application of the relevant provisions of this Convention to such persons, irrespective of the status of a public official, whenever the economic activities or transactions involved include or result in the use of public resources or produce results that affect the public or aim at the provision of public services.

“Article 40

“Prosecution, adjudication and sanctions

Option 1²

“1. Each State Party shall make the commission of an offence established in accordance with articles [...] [articles on criminalization] of this Convention liable to criminal sanctions that take into account the gravity of that offence.

“2. Each State Party shall take such measures as may be necessary to limit any immunity and any jurisdictional privilege with respect to the investigation, prosecution and adjudication of offences involving corruption to what is strictly necessary for the smooth functioning of a democratic society.³

“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

¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

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. States Parties shall consider the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction and the establishment of national records of persons thus disqualified from acting as directors of legal persons.

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

“6. Each State Party shall, where appropriate, establish under its domestic law a statute of limitations period applicable to the offences established in accordance with articles [...] [articles on criminalization] of this Convention, which shall allow an adequate period of time for the investigation and prosecution of these offences. That period of time shall be longer in cases where the alleged offender has evaded the administration of justice.

“7. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials or international civil servants. In determining the criminal sanction to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.

“8. 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.

“Option 2⁴

“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 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.

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

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

“5. 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 covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

“6. 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.

“Option 3⁵

“1. Each State Party shall establish penalties taking into account the damage that the actions have caused, while regulating the sanctions for the crimes set forth in article [...] [Criminalization of corruption of public officials] of this Convention.

“2. Each State Party shall, to the extent permitted by its domestic law, leave the prosecution of crimes covered by this Convention to courts that are specialized in such matters.

“3. Each State Party shall, to the extent permitted by its domestic law, adopt the required regulations that provide for public officials accused of crimes covered by this Convention to leave their work until the end of the prosecution, where necessary.

“4. Each State Party shall, to the extent permitted by its domestic law, adopt the regulations necessary for it to keep the lapse of time of the cases and penalties concerning the crimes covered by this Convention as wide as possible, pro rata to the damages caused by those crimes.

“5. Each State Party shall take into consideration the negative results caused by corruption while evaluating the early release or parole of persons convicted of crimes covered by this Convention.”

Rolling text (A/AC.261/3/Rev.1)

“Article 31⁶

“Enhancement of sanctions

“1. Each State Party shall adopt all legislative and administrative measures necessary in order to make possible more severe punishment and to apply effective

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁶ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22). During the first reading of the draft text, at the first session of the Ad Hoc Committee, Turkey amended its proposal. Also at the first reading, it was suggested that the concept of paragraph 1 should be merged into article 40.

methods against corruption whenever the crimes listed in articles [...] [articles on criminalization] of this Convention are committed in an organized manner.⁷

“2. Each State Party, in accordance with its domestic law, shall adopt all the legislative and administrative measures necessary to prosecute and punish persons who take part in the commission of the crimes covered by this Convention and to extend the application of the relevant provisions of this Convention to such persons, irrespective of the status of a public official, whenever the economic activities or transactions involved include or result in the use of public resources or produce results that affect the public or aim at the provision of public services.”⁸

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 40⁹

“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 endeavour to take such measures as may be necessary to limit any immunity and any jurisdictional privilege of its public officials with respect to the investigation, prosecution and adjudication of offences involving corruption under its legal system to what is strictly necessary in order to guarantee to persons entitled to such privileges and immunities adequate protection in the exercise of their functions.¹⁰

“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 trial or appeal

⁷ Some delegations proposed to replace the words “in an organized manner” with the words “by an organized criminal group”.

⁸ During the first reading of the draft text, at the first session of the Ad Hoc Committee, Turkey indicated its intention to consider withdrawing this paragraph after completion of the discussion on article 32 (Criminalization of corruption in the private sector).

⁹ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Egypt, France, Mexico, the Netherlands, Pakistan and Turkey (A/AC.261/L.58), following the first reading of the draft text and pursuant to a request by the Chairman.

¹⁰ Text based on the proposal submitted by France (A/AC.261/IPM/10), supported by Austria, Colombia, the Netherlands, Pakistan and Turkey. At the second session of the Ad Hoc Committee, France proposed the following amended language for paragraph 2 (see A/AC.261/L.52):

“2. Each State Party shall take such measures as may be necessary to limit any immunity and any jurisdictional privilege with respect to the investigation, prosecution and adjudication of offences involving corruption to what is strictly necessary in order to guarantee to persons entitled to such privileges and immunities adequate protection in the exercise of their functions.”

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

“5. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.¹¹

“Option 1¹²

“6. States Parties shall consider the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction and the establishment of national records of persons thus disqualified from acting as directors of legal persons.

“Option 2¹³

“6. States Parties shall consider the possibility of disqualifying by court order or other appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from holding any office and from being elected to any office and the establishment of national records of persons thus disqualified.

“Option 3¹⁴

“6. States Parties shall consider the possibility of:

“(a) Suspending from his or her post, office or functions, as a precautionary measure, for a reasonable period of time and without prejudice to the responsibility assigned to him or her, any public official accused of an offence under this Convention whenever, in the opinion of the competent authority, such action is advisable for the conduct or continuation of investigations and, once the necessary procedural steps have been carried out and where warranted by the gravity of the offence, disqualifying that official from occupying such a post or office or performing such functions in the public administration;

“(b) Establishing a register of persons subject to such penalty or disqualification with a view to preventing them from being hired by other departments or bodies during the period of disqualification.^{15, 16}

“7. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials [or

¹¹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that not only the gravity, but also the special nature of the offence should be taken into consideration.

¹² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4), supported by Colombia, France, Pakistan and Turkey.

¹³ New text proposed by Pakistan.

¹⁴ New text proposed by Mexico, supported by Colombia and Turkey.

¹⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that the matter covered by paragraph 6 would be most appropriately dealt with in article 49 (Establishment of criminal record). These delegations also held the view that records should be made available to other public bodies, both domestically and internationally.

¹⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed doubts about the content of this paragraph, especially in view of the fact that decisions on the scope of the future convention were still pending.

international civil servants]. In determining the criminal sanctions to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.^{17, 18}

“8. 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.¹⁹

“9. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.”^{20, 21}

Fourth session: Vienna, 13-24 January 2003

Notes by the Secretariat

1. Article 31 was deleted.

Rolling text (A/AC.261/3/Rev.3)

“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.²²

“2. Each State Party shall endeavour to take such measures as necessary to limit the scope of any immunity and any jurisdictional privilege of its public

¹⁷Text based on the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4), supported by Colombia, France, Mexico and Pakistan. The first sentence of the paragraph is also supported by Turkey.

¹⁸During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that this paragraph should be amended to show that a disciplinary sanction should not be regarded as precluding authorities from seeking the maximum possible sentence against a person convicted of corruption, as the imposition of disciplinary sanctions would not constitute double jeopardy.

¹⁹During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations pointed out that this paragraph might have a bearing on article 25 and that this relationship would need to be borne in mind at the second reading of the draft text.

²⁰During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that this matter should be dealt with elsewhere, perhaps in connection with the provisions on the protection of witnesses and victims.

²¹During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the addition of the following two paragraphs to the text of this article (A/AC.261/L.64):

“Each State Party may, to the extent permitted by its domestic law, assign the prosecution and trial of crimes covered by this Convention to special courts, with a view to expediting the conclusion of such cases and in the process developing the necessary expertise and specialization for dealing with such crimes.

“Each State Party shall incorporate appropriate provision in its domestic law to ensure that any public official charged with the commission of a crime covered by this Convention is not allowed to work in his or her official capacity while legal proceedings against him or her are taking place.”

²²The Russian Federation proposed the following amendment to paragraph 1 of article 40 (see A/AC.261/11):

“1. Each State Party shall make the commission of an offence established in accordance with articles [...] [articles on criminalization] of this Convention liable to criminal sanctions, including property sanctions, that take into account the gravity of that offence.”

officials with respect to the investigation, prosecution and adjudication of offences established in accordance with this Convention under its legal system to what is strictly necessary in order to guarantee to persons entitled to such privileges and immunities adequate protection in the exercise of their function.²³

“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 trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.²⁴

“5. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave [and special] nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.²⁵

“6. Where a public official is accused of an offence under this Convention, each State Party shall consider the possibility of suspending the public official from his or her post, office or functions or relocating him or her within an organization, as a precautionary measure, where such action is warranted by the gravity of the offence and is advisable for the conduct or continuation of investigations or the protection of significant public interests. Any suspension or relocation should be for a reasonable period²⁶ of time and exercised with due regard for the presumption of innocence.²⁷ Suspension or relocation of a public official on this basis should be without permanent prejudice to the responsibility assigned to the accused public official.²⁸

²³The text of this paragraph was produced by 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 fourth session of the Ad Hoc Committee, after the second reading of the draft text.

²⁴During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this paragraph should be deleted. Many delegations supported its retention, especially in view of the fact that the text was reproduced from the Organized Crime Convention and had been approved unanimously in that Convention.

²⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed the deletion of this paragraph, while some delegations expressed concern about its mandatory nature.

²⁶During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation commented that the phrase “reasonable period” was not useful, as it was not clear who would determine what was “reasonable”.

²⁷During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations noted that this provision would be contrary to the presumption of innocence as it operated in their domestic legal systems.

²⁸The text of this paragraph and paragraph 7 was produced at the fourth session of the Ad Hoc Committee by an informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention and coordinated by Australia. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations questioned the need for paragraph 6. Other delegations proposed language for that paragraph, including Chile (A/AC.261/L.157):

“6. States Parties shall consider the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from holding any office, including directorial and/or administrative positions in public service enterprises that offer services of public utility, irrespective of their ownership, for which purpose States Parties shall establish an annually updated list, in addition to a national register of persons thus disqualified”;

and Yemen (A/AC.261/L.153):

“6. States Parties shall take such measures as may be necessary to disqualify, indefinitely or temporarily, persons convicted of offences covered by this Convention from holding or being nominated to any public office or

“7. (a) Where warranted by the gravity of the offence, each State Party shall consider the possibility of disqualifying, by court order or any other appropriate means, for a reasonable period of time,²⁹ persons convicted of offences covered by this Convention from:

“(i) Holding public office;³⁰

“(ii) Holding office in a parastatal enterprise; and

“(iii) Holding office in a legal person incorporated within the jurisdiction of the State Party³¹ unless rehabilitated;

“(b) Each State Party shall also consider the possibility of establishing a register or national record of persons subject to disqualification with a view to preventing them from being hired by other organizations during the period of disqualification.^{32, 33}

“8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials [or international civil servants]. In determining the criminal sanctions to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.

“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.³⁴

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

from occupying any post, unless rehabilitated, and to establish a national record of disqualified persons in order to ensure that they do not hold nor are nominated to any other office, provided that any public official accused of committing a criminal offence established under this Convention is temporarily suspended until a final decision is made in connection with the criminal offence.”

²⁹During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation commented that the phrase “reasonable period” was not useful, as it was not clear who would determine what was “reasonable”.

³⁰During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations highlighted the need to consider disqualification from public office given the importance of the public sector in addressing corruption. Some delegations indicated that this might be impossible where there were constitutionally mandated eligibility requirements for public office holders.

³¹During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations could not consider implementing this type of provision in the private sector because it would violate the right to work.

³²During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations noted that a register of persons subject to disqualification would be impractical in application and would compromise domestic privacy laws. Those delegations wanted to make it clear at the outset that they would not be able to implement the provision. Some delegations also noted that the provision would raise constitutional issues.

³³During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations questioned the need for paragraph 7 and expressed concern that the provision would apply to low-level conduct, could affect the operation of small companies and could be subject to abuse for political purposes. Other delegations commented on the optional nature of the provision and the potential utility of such a provision for some countries in the fight against corruption.

³⁴During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed the deletion of this paragraph.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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 trial³⁵ 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

³⁵It was agreed that the *travaux préparatoires* would indicate the understanding that the expression “pending trial” is deemed to include the investigation phase.

“(b) Holding office in a parastatal enterprise.³⁶”

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

“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.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“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 may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance³⁷ 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 trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

³⁶The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention recommended replacing the phrase “parastatal enterprise” in article 40, paragraph 7 (b), with the phrase “an enterprise owned in part or in whole by the State”, as the former phrase appeared confusing and was difficult to translate into other languages (see A/AC.261/16, para. 26).

³⁷It was agreed that the *travaux préparatoires* would indicate the understanding that this balance would be established or maintained in law and in practice.

“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 an enterprise owned in whole or in part by the State.

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

“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.”

Notes by the Secretariat

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 40, paragraphs 3, 6, 7 and 10, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. At its sixth session, the Ad Hoc Committee provisionally approved article 40 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 30

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 may be 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 established in accordance with 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 trial 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 established in accordance with 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 established in accordance with this Convention from:

- (a) Holding public office; and
- (b) Holding office in an enterprise owned in whole or in part by the State.

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

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 established in accordance with this Convention.

C. Interpretative notes

The interpretative notes on article 30 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 34-35) are as follows:

Paragraph 2

(a) The appropriate balance referred to in this paragraph would be established or maintained in law and in practice;

Paragraph 4

(b) The expression “pending trial” is considered to include the investigation phase.

Article 31. Freezing, seizure and confiscation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 42

“Confiscation and seizure

“Option 1¹

“1. Each State Party shall take, 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. Each State Party shall take 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. 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.

“4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

“5. 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 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.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“6. For the purposes of this article and article [...] [International cooperation for 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 be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

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

“8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

“9. 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.

“Option 2²

“1. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that these are administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property as well as respect for the time limits that result in abandonment, [for example, six months,] beginning from the notification of freezing, seizure or confiscation in the case of movable property and [one year] in the case of immovable property.

“2. 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.

“3. Each State Party shall take 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.

“4. 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.

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

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

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

“6. 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.

“7. For the purposes 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 be seized.

“8. States Parties may consider the possibility of requiring that an offender accused or suspected of acts of corruption 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 principles of their domestic law and with the nature of the judicial and other proceedings.

“9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

“Option 3³

“1. Each State Party shall adopt, to the greatest extent possible within its domestic legal systems, 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. Each State Party shall take 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. 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.

“4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

“5. 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

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

“6. For the purposes 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 be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

“7. 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 the judicial and other proceedings.

“8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

“9. 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.

“Option 4⁴

“1. States Parties shall adopt all legislative and administrative measures necessary to enable the seizure of:

“(a) All kinds of proceeds of crime or assets that correspond to the value of the proceeds obtained from crimes covered by this Convention;

“(b) Values or products or instrumentalities that correspond to such that have been allocated or spent for the commitment of crimes covered by this Convention or that have been used in the commitment of such crime or arising from such crime.

“2. States Parties shall take the measures necessary to ensure the identification, tracing, freezing or confiscation of the assets or proceeds described in paragraph 1 of this article.

“3. If the assets or proceeds described in paragraph 1 of this article have been transformed or merged with legal assets or proceeds, corresponding assets shall be seized or confiscated.

“4. States Parties shall be able, to the extent allowed by principles of their domestic law, to require that an accused person indicate the legal source of the revenues or assets that are suspected of being gained from crime or such other assets that are subject to seizure.

“5. The provisions of this article shall not be interpreted in such a manner as to prejudice the rights of bona fide third persons.

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

“Option 5⁵

“1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, 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. 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.

“4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

“5. 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.

“6. For the purposes of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

“7. 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 the judicial and other proceedings.

“8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

“9. 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.”

⁵ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)***“Article 42⁶**“Confiscation and seizure⁷*

“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 destined⁸ for use in offences covered by this Convention.⁹

“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 eventual¹⁰ confiscation.

“[3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that that property is administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property, as well as respect for the time limits that result in abandonment [for example, six months,] beginning from the notification of freezing, seizure or confiscation in the case of movable property and [one year] in the case of immovable property.]¹¹

“[4. Each State Party shall also take measures to consider and execute requests for the interim freezing and seizure of all assets of the offender, whether being kept in his or her own name or in the name of his or her friends, associates, relatives or accomplices, for a reasonable period of time pending investigation or

⁶The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Mexico, the Netherlands, Pakistan, the Philippines and Turkey (A/AC.261/L.63), following the first reading of the draft text and pursuant to a request by the Chairman.

⁷During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the title of this article should reflect the order of the process which the article describes. According to those delegations, the title should read as follows: “Freezing, seizure and confiscation”.

⁸During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that the word “destined” be replaced with the word “intended” (see A/AC.261/L.49/Add.1).

⁹During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the nature of instrumentalities would need to be examined if there was to be clarity about the breadth of the offences covered by the future convention.

¹⁰During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to replace the word “eventual” with the word “possible” (see A/AC.261/L.49/Add.1). The Libyan Arab Jamahiriya proposed to replace the word “eventual” with the words “if necessary” (see A/AC.261/L.169).

¹¹Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations indicated that they did not support the requirement of having a single body administering forfeited funds.

trial and shall also establish mechanisms to consider claims by any person against the assets frozen.]¹²

“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 freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.¹³

“7. Income or other benefits derived from proceeds of crime,¹⁴ 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 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.¹⁵]

“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 fundamental 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.¹⁶

“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.”¹⁷

¹²Text taken from a proposal submitted by Pakistan.

¹³During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States proposed that the words “at least” be inserted before the words “the assessed value”, in order to clarify that, under some circumstances, intermingled legitimate funds may be an instrumentality of a related money-laundering offence and should also be subject to confiscation.

¹⁴During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that the words “or other benefits derived from the proceeds of crime” be placed in parentheses and that the comma be deleted (see A/AC.261/L.49/Add.1).

¹⁵Text not included in the proposal of Mexico owing to the existence of article 58 on bank secrecy.

¹⁶During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed that this paragraph be amended to read as follows (A/AC.261/L.64):

“10. States Parties may stipulate that the provisions of this article shall not be construed to prejudice the rights of bona fide third parties provided that any third party, upon being required so to do, is able to establish his rights.”

¹⁷During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the insertion of an additional paragraph at the end of article 42 (see A/AC.261/L.49/Add.1), as follows:

“For the purposes stated in articles [...] [Acts of corruption] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention, the fact that the property obtained or derived from an act of corruption intended for political purposes or the claim that the act of corruption was committed for political motives shall not, in itself, be sufficient to consider such act a political offence or an ordinary offence linked to a political offence.”

Fourth session: Vienna, 13-24 January 2003**Rolling text (A/AC.261/3/Rev.3)***“Article 42**“[Seizure and confiscation] [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.¹⁸”

“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 eventual¹⁹ confiscation.

“[3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized, confiscated or abandoned property that is the proceeds of crime by the competent authorities in accordance with its domestic law.]²⁰”

“[4. Each State Party shall also take measures to consider and execute requests for the interim freezing and seizure of proceeds of corruption in the possession of the offender, whether being kept in his or her own name or in the name of his or her friends, associates, relatives or accomplices, for a reasonable period of time necessary for investigation or trial and shall also establish mechanisms to consider claims by any person against the frozen assets.]”

¹⁸As mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the nature of instrumentalities would need to be examined if there was to be clarity about the breadth of the offences covered by the future convention. This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The Russian Federation proposed the following amendment to paragraph 1 of article 42 (see A/AC.261/11):

“1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable the 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;

“(c) Property or other assets which, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by this Convention.”

¹⁹As mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to replace the word “eventual” with the word “possible” (see A/AC.261/L.49/Add.1). This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

²⁰Yemen proposed to add at the end of paragraph 3 the following sentence (see A/AC.261/L.153): “Each State Party shall also consider measures relating to the administration and use of abandoned property, as well as respect for the time limits that result in abandonment, in accordance with the principles of its domestic law.”

“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.²¹

“6. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation [or civil forfeiture] up to [at least] the assessed value of the intermingled proceeds [up to the total value of the proceeds of crime].²²

“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 confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order that bank,²³ 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.²⁴

“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 fundamental principles of their domestic law and with the nature of judicial and other proceedings.²⁵

“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.”

²¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, India suggested that if the definition of proceeds of crime was extended to include such proceeds that had been transformed or converted, there would be no reason to retain this paragraph.

²² Lebanon proposed to amend paragraph 6 of article 42 to read as follows (see A/AC.261/11):

“6. For the purposes of this article and article [...] [International cooperation for confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order, according to its legislative principles, that bank, financial or commercial records be made available or seized. States Parties shall not decline to act under the provisions of this article on the ground of bank secrecy.”

²³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Pakistan proposed the insertion of the words “and account”. Morocco suggested that the procedure for records to be made available should be specified.

²⁴ The brackets around the last sentence of this paragraph were removed at the suggestion of the informal working group established after the second reading of article 58.

²⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Yemen expressed concern about the use of the words “and with the nature of judicial and other proceedings”.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)****“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.]²⁶

“[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 freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.²⁷

“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

²⁶The decision on this paragraph will be taken in conjunction with the finalization of relevant provisions in chapter V.

²⁷It was agreed that the *travaux préparatoires* would indicate that this provision is intended as a minimum threshold and that States parties will be free to go beyond it in their domestic legislation.

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.”

Notes by the Secretariat

1. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 42, paragraph 1, of the draft convention. One member of the consistency group requested that a final decision be taken on whether to replace the phrase wherever it appeared in this paragraph once the Ad Hoc Committee reached an agreement on the question of dual criminality (see A/AC.261/24 and Corr.1, para. 12).

2. At its fifth session, the Ad Hoc Committee provisionally approved article 42 of the draft convention, except paragraph 3 and subject to a decision on whether to retain the phrase “offences covered by this Convention” or replace it with the phrase “offences established in accordance with this Convention” (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. The decision on paragraph 3 was taken in the light of relevant provisions in chapter V of the draft convention. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 31

Freezing, seizure and confiscation

1. Each State Party shall take, 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 established in accordance with 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 established in accordance with this Convention.

2. Each State Party shall take 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, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such 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.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such 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.

7. For the purpose of this article and article 55 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. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. 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.

C. Interpretative notes

The interpretative note on article 31 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 36) is as follows:

Paragraph 5

This provision is intended as a minimum threshold and States parties will be free to go beyond it in their domestic legislation.

Article 32. Protection of witnesses, experts and victims

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 43

“Protection of ‘whistle-blowers’, witnesses and victims

“Option 1¹

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for ‘whistle-blowers’ and witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the ‘whistle-blower’ or witness, such as permitting testimony to be given through the use of communications technology such as video links 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.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“Option 2²

“1. Each State Party shall ensure that its domestic law takes account of the need to combat corruption and provides, in particular, effective remedies for persons whose rights and interests are affected by corruption in order to enable them to obtain, in accordance with the principles of its internal law, compensation for damages.

“2. Each State Party shall, subject to its domestic law, enable 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.

“Option 3³

“1. Each State Party shall take appropriate measures to safeguard and provide effective protection from potential retaliation or intimidation for witnesses, persons who report offences, informers and experts in judicial or administrative proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them. Each State Party shall adopt such measures as may be necessary to safeguard and protect persons who collaborate with the authorities, witnesses, persons who report offences, informers and experts who give testimony for the pursuit, prosecution and punishment of acts of corruption.

“2. The provisions of this article shall also apply to victims who are natural persons insofar as they are witnesses.

“Option 4⁴

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

² Text taken from the proposal submitted by France (A/AC.261/IPM/10).

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“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 take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

“6. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

“7. Each State Party shall, subject to its domestic law, enable 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.

“Option 5⁵

“Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

“(a) Persons who report criminal offences established in accordance with article [...] [Criminalization of corruption of public officials] of this Convention or otherwise cooperate with investigating or prosecuting authorities;

“(b) Witnesses who give testimony concerning such offences.

“Option 6⁶

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁶ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

“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 take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

“6. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

“7. Each State Party shall, subject to its domestic law, enable 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.

“8. 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.

“9. 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.

“10. Protection of such persons shall be as provided for in article [...] [Protection of witnesses] of this Convention.”

Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)**

“Article 43^{7, 8}

“Protection of witnesses and victims⁹

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.¹⁰

“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:

“(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;

⁷ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, France, Mexico, the Netherlands and Turkey, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.73). At the submission of the revised draft text, it was indicated that the proposal of France, which had previously appeared as option 2, and paragraph 6 of the proposal of Colombia, which had previously appeared as option 4 (see A/AC.261/3 (Part II)), would be discussed in the context of articles 44 (Consequences of acts of corruption) and 45 (Compensation for damages).

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed an alternative formulation for article 43 (see A/AC.261/L.49/Add.1) to read as follows:

“Article 43

“Protection of witnesses and victims

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts in criminal proceedings 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:

“(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 testimony to be given 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 links 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. In addition to paragraph 5 of article [...] [Code of conduct for public officials], each State Party shall consider the application of the measures referred to in paragraphs 1 and 2 of this article to victims and 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, without their having given testimony in criminal proceedings.”

⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, in order to protect those persons called “whistle-blowers” in article 43, it was proposed, first, to amend subparagraph 1 (c) of article 13 (Civil society) to read as follows (see A/AC.261/L.73):

“(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”;

and, second, to add a third paragraph to article 13, as follows:

“3. Each State Party shall take all appropriate measures to ensure that the bodies referred to in article 5 bis are known to the public and shall provide access to those bodies for any incidents that may be considered to constitute an offence as defined in this Convention to be reported, including anonymously.”

¹⁰ During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the inclusion of a separate paragraph to define “whistle-blowers”, to include in that category those individuals who provide information that leads to the prevention of an act of corruption and to provide effective protection for those persons from potential retaliation or intimidation (see A/AC.261/L.74).

“(b) Providing evidentiary rules to permit witness testimony to be given 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 links 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. In addition to paragraph 5 of article [...] [Code of conduct for public officials], each State Party shall consider the application of the measures referred to in paragraphs 1 and 2 of this article to victims and persons who report 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, without giving testimony in criminal proceedings.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 43¹¹

“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 retaliation or potential 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:

“(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 witness testimony to be given 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.

¹¹The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Egypt, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention.

“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.”^{12, 13}

Notes by the Secretariat

1. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 43 of the draft convention, subject to a decision on whether to retain the phrase “offences covered by this Convention” or replace it with the phrase “offences established in accordance with this Convention” (see A/AC.261/16, para. 25).

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 43, paragraph 1, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

¹²Formerly article 45, option 1, paragraph 2. This paragraph has been placed here on the recommendation of the informal working group coordinated by Mexico, which produced the revised text of articles 44 and 45. The Ad Hoc Committee did not review this paragraph after its distribution.

¹³Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Republic of Korea proposed that the following new paragraph be added after paragraph 4 of this article (A/AC.261/L.161):

“If ‘whistle-blowing’ has resulted in the direct recovery or increase of revenues belonging to public agencies or in savings on their part, the ‘whistle-blower’ may request the competent authorities to pay him or her a reward and the requested authorities shall pay him or her an appropriate reward.”

Chile proposed the insertion of the following language for the purpose of preventing retaliation against public officials (see A/AC.261/L.157/Corr.1):

“States Parties shall adopt such measures as may be necessary to prevent direct or indirect retaliation or sanctions by bodies or authorities in respect of any of their personnel who collaborate in an investigation or report acts constituting offences of corruption in the form indicated above where such retaliation or sanctions compromise their position or dignity, such as unjustified reassignment of functions or undue transfer of functions, duties or units.”

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 32

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 established in accordance with 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:

(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 33. Protection of reporting persons

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 43

“Protection of ‘whistle-blowers’, witnesses and victims

“Option 1¹

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for ‘whistle-blowers’ and witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the ‘whistle-blower’ or witness, such as permitting testimony to be given through the use of communications technology such as video links 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.

“... ”

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“Option 3²

“1. Each State Party shall take appropriate measures to safeguard and provide effective protection from potential retaliation or intimidation for witnesses, persons who report offences, informers and experts in judicial or administrative proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them. Each State Party shall adopt such measures as may be necessary to safeguard and protect persons who collaborate with the authorities, witnesses, persons who report offences, informers and experts who give testimony for the pursuit, prosecution and punishment of acts of corruption.

“2. The provisions of this article shall also apply to victims who are natural persons insofar as they are witnesses.

“Option 4³

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links 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 take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

“6. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

“7. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

“Option 5⁴

“Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

“(a) Persons who report criminal offences established in accordance with article [...] [Criminalization of corruption of public officials] of this Convention or otherwise cooperate with investigating or prosecuting authorities;

“(b) Witnesses who give testimony concerning such offences.

“Option 6⁵

“1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings 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:

“(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 witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links 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 take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

“6. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

“7. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁵ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

“8. 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.

“9. 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.

“10. Protection of such persons shall be as provided for in article [...] [Protection of witnesses] of this Convention.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 43 bis⁶ “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 with reasonable grounds to the competent authorities any incident concerning offences covered by this Convention.”

Notes by the Secretariat

1. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 43 bis of the draft convention, subject to a decision on whether to retain the phrase “offences covered by this Convention” or replace it with the phrase “offences established in accordance with this Convention” (see A/AC.261/16, para. 25).

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 43 bis of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

⁶The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Egypt, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Vice-Chairman with responsibility for this chapter of the draft convention. The outcome of the discussions at the informal working group was the insertion in the draft text of a new article 43 bis to deal with the protection of reporting persons and the revision of article 43 focusing on the protection of witnesses, experts and victims (see also under article 32 of the convention). It was noted that article 43 bis could be considered during the third reading of the draft convention in connection with article 7 (Codes of conduct for public officials).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 33
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 established in accordance with this Convention.

Article 34. Consequences of acts of corruption

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 44¹

“Civil responsibility resulting from acts of corruption

“...

“2. Each State Party shall ensure that acts of corruption constitute sufficient grounds for annulling a contract, public bidding, concession or other legal acts.

“Article 36

“Measures against corruption

“Option 1²

“Each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

“Option 2³

“1. Each State Party shall, to the extent appropriate and in accordance with its domestic law, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials, in addition to the measures set forth in article [...] [Measures against money-laundering] of this Convention.

“2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by France (A/AC.261/IPM/10).

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“Option 3⁴

“1. Each State Party, in accordance with its domestic law, may opt to cancel, rescind, recall or set aside any contract, arrangement or benefit awarded or given in direct consequence of an act of corruption.

“2. Nothing in this article shall prevent any private party from pressing claims against natural or legal persons who are found to have committed acts of corruption.”

Second session: Vienna, 17-28 June 2002***Rolling text (A/AC.261/3/Rev.1/Add.1)***

“Article 44⁵, 6

“Consequences of acts of corruption“Option 1⁷

“With due regard to the legitimately acquired rights of third [affected]⁸ parties and seeking the best achievement of the general interest, States Parties shall adopt, according to their domestic law, such measures as may be necessary to eliminate the consequences of acts of corruption. [In this context, States Parties may, for

⁴ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23) and related to the “consequences of acts of corruption”.

⁵ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Mexico, which coordinated an informal working group, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.72).

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to merge articles 44 and 45 (“Compensation for damage” — see under article 35 of the Convention) into a single article which would be entitled “Civil responsibility resulting from acts of corruption” and would read as follows (see A/AC.261/L.49/Add.1):

“1. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that natural or legal persons who suffer damages as a result of an act of corruption have the right to initiate civil action to obtain compensation for such damages.

“2. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

“3. Each State Party shall ensure that acts of corruption constitute sufficient justification for annulling a contract, public bidding, concession or other legal acts.

“4. Each State Party shall, consistent with its domestic laws, provide for the principle of compensation of damages committed under the following conditions:

“(a) The defendant has committed or authorized the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

“(b) The plaintiff has suffered damage; and

“(c) There is a causal link between the act of corruption and the damage.

“5. Each State Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-State Party, from that Party’s appropriate authorities.

“6. Each State Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all circumstances, if the plaintiff has by his or her own fault contributed to the damage or its aggravation.

“7. Each State Party shall provide in its internal law for proceedings for the recovery of damage to be subject to a limitation of not less than three years from the day that the person who suffered damage became aware or should reasonably have been aware that the damage had occurred or that an act of corruption had taken place, and of the identity of the person responsible. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

“8. The laws of the States Parties concerned regulating suspension or interruption of limitation periods shall, if appropriate, apply to the limitation periods prescribed in this article.”

⁷ Proposal submitted by Spain.

⁸ Proposal submitted by the United States.

example, consider corruption a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession or other similar instrument.]⁸

“Option 2

“1. Taking fully into account the legitimate rights of third parties, each State Party shall ensure that an act of corruption constitutes grounds for annulling a contract or withdrawing a concession or other similar legal instrument if it is proved that corruption had a direct or indirect effect at the time of its conclusion.”⁹

“2. The State Party may, at its option, withdraw any concession, rescind any contract, or recall any legal right, benefit or advantage if it is proved to have been a consequence of any act of corruption and found to be against the public interest, without incurring any obligation to provide compensation.”¹⁰

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 44¹¹

“*Consequences of acts of corruption*

“With due regard to the legitimately acquired rights of third [affected] parties, States Parties shall adopt measures [as may be necessary],¹² in accordance with fundamental principles of their domestic law, to address consequences of corruption. In this context, States Parties may, for example, 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.”

Notes by the Secretariat

1. Article 36 (Measures against corruption) was deleted.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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

⁹ Text taken from the proposal submitted by Morocco (A/AC.261/L.55).

¹⁰ Text taken from the proposal submitted by Pakistan (A/AC.261/L.54).

¹¹ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

¹² Addition proposed by the Netherlands.

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.”

Notes by the Secretariat

2. At its fifth session, the Ad Hoc Committee provisionally approved article 44 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 34

Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its 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 35. Compensation for damage

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 44¹

“Civil responsibility resulting from acts of corruption

“1. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that natural or legal persons who suffer damages as a result of an act of corruption have the right to initiate civil action to obtain compensation for such damages.

“ ...

“Article 45²

“Compensation for damage

“1. Each State Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

“2. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

“3. Each State Party shall, consistent with its domestic laws, provide for the compensation of damages committed under the following conditions:

“(a) The defendant has committed or authorized the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

“(b) The plaintiff has suffered damage; and

“(c) There is a causal link between the act of corruption and the damage.

“4. Each State Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

“5. Each State Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-State Party, from that Party’s appropriate authorities.

“6. Each State Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all circumstances, if the plaintiff has by his or her own fault contributed to the damage or its aggravation.

“7. Each State Party shall provide in its internal law for proceedings for the recovery of damage to be subject to a limitation of not less than three years from the day that the person who suffered damage became aware or should reasonably have been aware that the damage had occurred or that an act of corruption had taken place, and of the identity of the person responsible. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

“8. The laws of the States Parties concerned regulating suspension or interruption of limitation periods shall, if appropriate, apply to the limitation periods prescribed in this article.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 45³

“*Compensation for damages*

“Option 1⁴

“1. Each State Party shall ensure that its domestic law takes account of the need to combat corruption and provides, in particular, effective remedies for persons whose rights and interests are affected by corruption in order to enable them to obtain, in accordance with the principles of its internal law, compensation for damages.

“2. 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.

“Option 2⁵

“1. Each State Party shall adopt such legislative measures and other measures as may be necessary to ensure that persons who have suffered damage as

³ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Mexico, which coordinated an informal working group, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.72).

⁴ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13), as orally amended.

a result of an act of corruption have the right to initiate a [legal] [civil] action against persons responsible for that damage in order to obtain full compensation.⁶

“2. For the purposes of paragraph 1, the following conditions shall be fulfilled in order for the damage to be compensated:

“(a) The [defendant] [offender] has intentionally committed or authorized the act of corruption;

“(b) The plaintiff has suffered damage; and

“(c) There is a causal link between the act of corruption and the damage.

“3. Each State Party shall provide in its internal law that, if several defendants are liable for damage resulting from the same corrupt activity, they shall be jointly and severally liable.⁷

“4. Each State Party shall provide in its internal law for the compensation to be reduced or disallowed, having regard to all circumstances, if the plaintiff has by his or her own fault contributed to the damage or its aggravation.⁸

“5. The compensation referred to in this article may cover material damage, loss of profits and non-pecuniary loss.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 45^{9, 10}

“*Compensation for damages*”

“Each State Party shall adopt measures as may be necessary, in accordance with fundamental principles of its domestic law, to ensure that entities or persons¹¹ who have suffered damage as a result of an act of corruption¹² have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.”

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the insertion of the following additional text (see A/AC.261/L.74): “Each State Party shall provide in its internal law for any public official who suffers damage, both pecuniary and non-pecuniary, as a consequence of frivolous, mala fide, intentional or premeditated allegations of corruption against him or her which are subsequently proved false or found to be unsustainable to have the right to initiate an action in order to obtain full compensation for the damage caused by such allegations.”

⁷ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

⁸ Text taken from the proposals submitted by the Philippines (A/AC.261/IPM/24) and by Egypt (A/AC.261/L.49/Add.1).

⁹ Canada reserved its position on this article.

¹⁰ The text of this article is a revised version submitted at the fourth session of the Ad Hoc Committee by Mexico, which coordinated an informal working group following the second reading of the draft text and pursuant to a request by the Chairman with responsibility for this chapter of the draft convention. The Ad Hoc Committee did not review the revised text after its distribution.

¹¹ Indonesia suggested replacing the words “entities or persons” with the words “either the State or corporation”.

¹² The term “acts of corruption” in this article is subject to the final result of the discussion on the definition of “acts of corruption” in article 2.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)***

*“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 persons¹³ 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.”¹⁴

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 45 of the draft convention (see A/AC.261/16, para. 25).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 35
Compensation for damage*

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons 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.

¹³It was agreed that the *travaux préparatoires* would indicate that the expression “entities or persons” is deemed to include States, as well as legal and natural persons.

¹⁴It was agreed that the *travaux préparatoires* would 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, including the right to determine whether to establish extraterritorial jurisdiction over acts referred to in the provision.

C. Interpretative notes

The interpretative notes on article 35 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 37-38) are as follows:

(a) The expression “entities or persons” is deemed to include States as well as legal and natural persons;

(b) This article is intended to establish the principle that States parties should ensure that they have mechanisms permitting persons or entities suffering damage to initiate legal proceedings, in appropriate circumstances, against those who commit acts of corruption (for example, where the acts have a legitimate relationship to the State party where the proceedings are to be brought). While article 35 does not restrict the right of each State party to determine the circumstances under which it will make its courts available in such cases, it is also not intended to require or endorse the particular choice made by a State party in doing so.

Article 36. Specialized authorities

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 39¹

“Specialized authorities

“Each State Party shall 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 domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.”

Notes by the Secretariat

1. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), it was agreed to review this article in conjunction with article 40 (Prosecution, adjudication and sanctions).

2. At the third session of the Ad Hoc Committee (Vienna, 30 September-11 October 2002), the Czech Republic proposed the following amended text for article 39 of the draft convention (see A/AC.261/L.138):

“Article 39

“Specialized authorities

“1. Each State Party shall take such measures as may be necessary to establish entities specializing in the fight against corruption. Those entities shall consist of a parliamentary commission mandated to investigate senior public officials and politicians, which shall meet on an ad hoc basis, and the following entities, which shall be established on a permanent basis:

“(a) A financial intelligence unit;

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“(b) An investigative unit under the authority of the police or an examining magistrate; and

“(c) An office of the State prosecutor.

“2. The entities referred to in paragraph 1 of this article shall have the necessary independence, in accordance with fundamental principles of the domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.”

3. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), a decision on the retention or deletion of this article was deferred until the finalization of article 5 bis (Specialized prevention structures).”

Sixth session: Vienna, 10-21 March 2003

Mauritius, South Africa and United Kingdom of Great Britain and Northern Ireland (A/AC.261/L.222)

“Article 39

“Specialized authorities

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of persons or entities specialized in combating corruption through law enforcement. Such persons or entities shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Staff of such entities should have the appropriate training and resources to carry out their tasks.”

Rolling text (A/AC.261/3/Rev.4)

“[Article 39

“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.]”

Notes by the Secretariat

4. At its sixth session, the Ad Hoc Committee provisionally approved article 39 of the draft convention (see A/AC.261/22, para. 22).

5. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 36
Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

C. Interpretative notes

The interpretative note on article 36 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 39) is as follows:

The body or bodies referred to in this article may be the same as those referred to in article 6.

Article 37. Cooperation with law enforcement authorities

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 46

“Measures to enhance cooperation with law enforcement authorities

“Option 1¹

“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.²

“1 bis. 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.

“2. 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.

“3. Protection of such persons shall be as provided for in article [...] [Protection of ‘whistle-blowers’, witnesses and victims] of this Convention.

“Option 2³

“1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of any of the offences established in accordance with this Convention to provide factual, specific help to competent authorities that may contribute to the recovery of the proceeds of crime.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by France (A/AC.261/IPM/10). France proposed that this paragraph precede the text proposed by Austria and the Netherlands.

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“2. States Parties 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. States Parties 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 as provided for in article [...] [Protection of ‘whistle-blowers’, witnesses and victims] of this Convention.

“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.

“Option 3⁴

“1. 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.

“2. 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.

“3. Protection of such persons shall be as provided for in article [...] [Protection of ‘whistle-blowers’, witnesses and victims] of this Convention.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 46⁵

“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 the recovery of proceeds of crime.

⁴ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

⁵ The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, France, the Netherlands and the Russian Federation (A/AC.261/L.76), following the first reading of the draft text and pursuant to a request by the Chairman.

“2. Each State Party shall consider providing [in their domestic law]⁶ 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 [of exempting from criminal responsibility]⁶ 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 as provided for in article [...] [Protection of witnesses and victims] of this Convention.

“5. Where a person referred to in paragraph 1 of this article located in one State Party [can] [wishes to]⁶ 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.”

Fourth session: Vienna, 13-24 January 2003

Yemen (A/AC.261/L.153)

“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 the recovery of proceeds, property or any other funds derived from criminal offences established under this Convention.

“2. Each State Party shall consider providing in its domestic law for the possibility, in appropriate cases, of mitigating punishment or exempting from criminal responsibility of an accused person where he or she provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

“3. Protection of such persons shall be as provided for in article [...] [Protection of persons in criminal proceedings] of this Convention.

“4. Where a person referred to in paragraph 1 of this article located in one State Party is prepared to 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,

⁶ Proposal submitted by the Russian Federation.

concerning the potential provision by the other State Party of the treatment set forth in paragraph 2 of this article.”

Rolling text (A/AC.261/3/Rev.3)

“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 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.”

Notes by the Secretariat

1. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, *inter alia*, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 46, paragraphs 2 and 3, of the draft convention (see A/AC.261/24 and Corr.1, para. 12). In addition, the title of article 46 was changed to read “Cooperation with law enforcement authorities”, in order to make it consistent with the titles of articles 48 (Cooperation between national authorities) and 48 bis (Cooperation between the private sector and national authorities) (see A/AC.261/24 and Corr.1, para. 12).

2. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 46 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 37

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 in accordance with 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 established in accordance with 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 established in accordance with this Convention.

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.

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 38. Cooperation between national authorities

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 48¹

“Cooperation with and between national authorities

“Each State Party shall take such measures as may be necessary to ensure that public authorities, as well as public officials, cooperate, in accordance with its domestic law, with its authorities responsible for investigating and prosecuting criminal offences:

“(a) By 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 [...] [Criminalization of corruption involving a public official], [...] [Criminalization of corruption in the private sector] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention has been committed; or

“(b) By providing, upon request, to the latter authorities all necessary information.”

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)***“Article 48²**“Cooperation with and between national authorities³*

“Each State Party shall take such measures as may be necessary to ensure that public authorities, as well as public officials,⁴ cooperate, in accordance with its domestic law, with its authorities responsible for investigating and prosecuting criminal offences. Such measures may include:⁵

“(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 [...] [Criminalization of corruption involving a public official], [...] [Criminalization of corruption in the private sector] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention has been committed; or

“(b) Providing, upon request, to the latter authorities all necessary information.”⁶

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)***“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.”

² The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria and the Netherlands (A/AC.261/L.61), following the first reading of the draft text and pursuant to a request by the Chairman.

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the deletion of the words “with and” (see A/AC.261/L.49/Add.1).

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed to insert the following text after the words “public officials”: “as well as authorities and officials of the private sector supplying public goods and services of a nature that impinges on public welfare and interest” (see A/AC.261/L.74).

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the insertion of the words “as follows” at the end of this paragraph (see A/AC.261/L.49/Add.1).

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations raised concerns about whether the formulation of this article allowed sufficient flexibility to provide for differences in legal systems, including the right against self-incrimination, which was embodied in many legal systems.

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 48 of the draft convention (see A/AC.261/16, para. 25).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 38**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, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or
- (b) Providing, upon request, to the latter authorities all necessary information.

Article 39. Cooperation between national authorities and the private sector

A. Negotiation texts

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 48 bis¹

“Cooperation between the private sector and national authorities

“1. Each State Party shall take such measures as may be necessary to ensure, in accordance with its domestic law, strengthened cooperation between the national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, for the purpose of exchanging information relating to the commission of criminal offences covered by this Convention.

“2. Each State Party shall consider, where appropriate, the establishment, in accordance with its domestic law, of an obligation for its nationals [and other persons with a habitual residence in its territory]² to report to the national investigating and prosecuting authorities the commission of a criminal offence covered by this Convention.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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

¹ Proposal submitted by the Gambia and the Netherlands at the second session of the Ad Hoc Committee (A/AC.261/L.62). The text was not considered by the Ad Hoc Committee at the first reading of the draft convention.

² The text appearing between square brackets was proposed by the Gambia.

investigating and prosecuting authorities the commission of a criminal offence covered by this Convention.]”

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, Yemen proposed to merge articles 48 bis and 48 (Cooperation between national authorities) as follows (see A/AC.261/L.153):

“Article [...]”

“Cooperation with investigating authorities”

“1. Each State Party shall take such measures as may be necessary to ensure that public authorities, public officials and officials of the private sector cooperate, in accordance with its domestic law, with its authorities responsible for investigating and prosecuting criminal offences. Such measures may include:

“(a) Informing the investigating authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with this Convention has been committed; or

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

“2. Each State Party shall consider, where appropriate, the establishment, in accordance with its domestic law, of an obligation for 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.”

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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.”

Notes by the Secretariat

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 48 bis, paragraphs 1 and 2, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. At its fifth session, the Ad Hoc Committee provisionally approved article 48 bis of the draft convention (see A/AC.261/16, para. 25).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 39

Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with 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 an offence established in accordance with this Convention.

Article 40. Bank secrecy

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 58¹

“Bank secrecy

“1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

“2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

“3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention.”

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

*“Article 58²
“Bank secrecy³”*

“1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

“2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.⁴

“3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to offences covered⁵ by this Convention.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“[Article 42 bis⁶
“Bank secrecy”*

“States Parties shall ensure that appropriate mechanisms are available within their domestic legal systems to overcome obstacles to the investigation of offences

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, South Africa proposed that paragraph 15 of article 51 be incorporated into this article and that, following such incorporation, the article be entitled “Bank secrecy and fiscal matters” and read as follows:

“1. States Parties may not refuse a request for extradition or mutual legal assistance on the sole ground of bank secrecy or on the ground that the offence is also considered to involve fiscal matters.

“2. The requested State Party shall apply this article according to its domestic law, procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

“3. The requesting State Party shall be obliged not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

“4. States Parties shall strengthen their laws to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention.”

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was considerable discussion as to whether or not the issue addressed by this article was already covered by the provision of paragraph 8 of article 53. Many delegations held the view that the matter was sufficiently important to warrant a separate provision, as it was likely to strengthen international cooperation.

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that this paragraph would need to be aligned with paragraph 19 of article 53.

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the phrase “offences covered by this Convention” was deemed to be more in line with the general formulation of this article and was thus inserted in the draft text.

⁶ The text of this article is a proposal submitted at the fourth session of the Ad Hoc Committee by the United States, which coordinated an informal working group following the second reading of article 58 of the draft convention and pursuant to a request by the Vice-Chairman with responsibility for chapter III of the draft convention. The Ad Hoc Committee did not review the text after its distribution.

covered by this Convention that may arise out of the application of bank secrecy laws.]”⁷

Notes by the Secretariat

1. Article 58 was deleted. Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, coordinated by the United States, to produce a revised text of this article. The informal working group proposed the deletion of article 58 on the following basis: (a) the inclusion of a second paragraph in article 50 bis on “International cooperation”; (b) the insertion of paragraphs 1 (without the first sentence) and 2 of article 58 in the footnote attached to paragraph 8 of article 53 (Mutual legal assistance), noting that Mexico wished those paragraphs to be considered in that context; (c) the deletion of the brackets in paragraph 8 of article 53 and around the last sentence of paragraph 8 of article 42; and (d) the reformulation of paragraph 3 of article 58 and its inclusion in the draft text as new article 42 bis. The Ad Hoc Committee did not have the opportunity to review the proposal of the informal working group at its fourth session.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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.”

Notes by the Secretariat

2. At its fifth session, the Ad Hoc Committee provisionally approved article 42 bis of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

⁷One delegation proposed an alternative formulation: “States Parties shall ensure that appropriate mechanisms are available within their domestic legal systems to allow the investigation of offences covered by this Convention, notwithstanding any bank secrecy laws.”

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 40
Bank secrecy*

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established 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 41. Criminal record

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 49

“Establishment of criminal record

“Option 1¹

“Each State Party shall 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 conviction 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.

“Option 2²

“In a criminal investigation concerning a crime covered by this Convention, each State Party shall, in order to use the information whether or not the accused has a previous conviction in another State, adopt legislative or other measures that will enable such records to be taken into consideration, as appropriate.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 49³

“Establishment of criminal record

“Each State Party shall adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it

¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (see A/AC.261/3 (Part II)).

deems appropriate, any previous conviction⁴ in another State of an alleged offender for the purpose of using such information in criminal proceedings⁵ relating to an offence covered by this Convention.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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 conviction^{6, 7} 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.”

Notes by the Secretariat

1. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 49 of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

2. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 49 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations suggested that it was necessary to make clear that previous convictions were “final” (see, for example, the proposal of Chile in document A/AC.261/L.157) or “definitive” (see the proposal of Egypt in document A/AC.261/L.49/Add.1) convictions. Chile further proposed to add the following language at the end of the article: “principally with a view to establishing whether the alleged offender is a recidivist or habitual offender”.

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, one delegation proposed to add “especially in criminal investigations” after the phrase “criminal proceedings”.

⁶ It was agreed that the *travaux préparatoires* should indicate that the term “conviction” should be understood to refer to a conviction no longer subject to appeal.

⁷ One delegation (Yemen) suggested that the conviction should be “duly contested” (see A/AC.261/L.153). Another delegation (Algeria) proposed to add a reference to the communication of criminal records related to acts of corruption through the establishment of a special criminal record listing convictions for corruption (see A/AC.261/L.154).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 41
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 conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

C. Interpretative notes

The interpretative note on article 41 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 40) is as follows:

The term “conviction” should be understood to refer to a conviction no longer subject to appeal.

Article 42. Jurisdiction

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 50

“Jurisdiction

“Option 1^{1, 2}

“1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over offences established in accordance with articles [...] [articles on criminalization] of this Convention when:

“(a) The offence is committed in whole or in part in the territory of that State Party; 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.

“3. For the purposes of article [...] [Extradition] of this Convention, each State Party shall take 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. Each State Party shall also take 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.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² With regard to the criteria for jurisdiction, France was in favour of the incorporation of all the relevant provisions of the Organized Crime Convention, including those of article 15, paragraph 2 (c) (ii).

“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 does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.³

“Option 2⁴

“1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles [...] [Criminalization of corruption], [...] [Criminalization of obstruction of justice] and [...] [Criminalization of the laundering of proceeds of crime] of this Convention when:

“(a) The offence is committed against the State Party; or

“(b) The offence is committed by a national of that State Party; or

“(c) The offence is committed in the territory of that State Party; or

“(d) 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 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 [...] [Criminalization of acts of corruption], paragraph 1 (c), of this Convention and is committed outside its territory and has, in the national territory of the State Party, the effect of an offence established in accordance with article [...] [Criminalization of the laundering of proceeds of crime], paragraph 1 (a), (b) or (c), of this Convention.

“3. 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 solely on the ground that he or she is one of its nationals.

“4. The investigation and prosecution of the crime of corruption of a foreign public official or an international civil servant shall be subject to the applicable rules and principles of each State Party. They shall not be influenced by considerations of national economic interest, the potential effect on relations with another State or the identity of the natural or legal persons involved.

³ Based on article 15 of the Organized Crime Convention.

⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“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 does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

“Option 3⁵

“1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

“(a) The offence is committed in the territory of that State Party; 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;

“(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:

(i) One of those established in accordance with article [...] [Criminalization of acts of corruption], paragraph [...], of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article [...] [Criminalization of the laundering of proceeds of crime], 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 [...] [Criminalization of the laundering of proceeds of crime], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

“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 Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“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.

“Option 4⁶

“1. Each State Party shall take the measures required for it to exercise its own judicial authority concerning crimes in accordance with article [...] [Criminalization of corruption] of this Convention whenever:

“(a) The crime is committed on the territory of that State Party; or

“(b) The crime is committed on a ship carrying the flag of that State Party or at the time that the crime is committed it is committed on a plane registered in accordance with the laws of that State Party.

“2. Each State Party shall implement the measures required for it to exercise its own judicial authority concerning the crimes covered by this Convention in the event that a person accused of such a crime is within its territory and it shall not return such a person solely on the grounds that he or she is the citizen of another State.

“3. Each State Party shall, moreover, implement the measures required for it to exercise its own judicial authority concerning crimes covered by this Convention when a person accused of such a crime is found within its territory and shall not return such person.

“4. While exercising its own judicial authority, if a State Party is warned or finds out that one or more State Party is conducting an investigation or a judicial examination concerning the same act, the relevant authorities of that State Party shall consult with the authorities of the other State Party in order to coordinate their activities in cases as appropriate.

“5. Provided that the norms of general international law are respected, this Convention shall not exclude the use of any judicial authority established in accordance with its domestic law by a State Party.”

⁶Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

*Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)*

“Article 50⁷,⁸

“Jurisdiction

“1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with [articles [...] [articles on criminalization] of this Convention]⁹ [articles [...] [Criminalization of corruption], [...] [Criminalization of obstruction of justice] and [...] [Criminalization of the laundering of proceeds of crime] of this Convention]¹⁰ [this Convention]¹¹ when:

“(a) The offence is committed [in whole or in part]⁹ in the territory of that State Party; 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.¹² [; or]

“[(c) The offence is committed against the State Party; or¹³]

“[(c bis) The offence is committed against the affected State Party, as established in this Convention.¹⁴]

“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:

(i) One of those established in accordance with article [...] [Criminalization of acts of corruption], paragraph [...], of this Convention and is committed outside its territory with a view to the commission of a related crime within its territory; or

⁷The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Mexico and the Netherlands (A/AC.261/L.75), following the first reading of the draft text and pursuant to a request by the Chairman. During the first reading of this article, several delegations noted that it was difficult to discuss jurisdiction in great detail until the determination of the criminal offences to be established in accordance with the future convention.

⁸During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed an alternative formulation for this article (see A/AC.261/L.49/Add.1).

⁹Proposal submitted by Austria and the Netherlands.

¹⁰Proposal submitted by Mexico.

¹¹Proposal submitted by Colombia.

¹²During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States proposed that this subparagraph be moved to paragraph 2.

¹³Proposal submitted by Mexico and India.

¹⁴Proposal submitted by Colombia. Colombia was to submit a further proposal defining the concept of “affected State Party”.

(ii) One of those established in accordance with article [...] [Criminalization of the 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 [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

“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.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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 whole or in part] in the territory of that State Party; 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.¹⁵

“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

¹⁵As already mentioned, during the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States proposed that this subparagraph be moved to paragraph 2. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the United States again noted that final resolution of this subparagraph would depend on the substantive offences established under chapter III.

“(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 [...] [Criminalization of the 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 [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

“[(d) The offence is committed against the State Party; or]

“[(e) The offence is committed against the affected State Party, as established in this Convention.]¹⁶

“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 [or related] 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.”

Notes by the Secretariat

1. In considering a proposal made by Chile at the fourth session of the Ad Hoc Committee 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), of the draft convention 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 (see the relevant interpretative note under article 48 of the convention).

¹⁶Subparagraphs (d) and (e) were previously subparagraphs (c) and (c bis) of paragraph 1 and were moved to paragraph 2 during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Many delegations were in favour of their deletion. Some delegations were of the view that the subparagraphs were necessary, although they acknowledged that they overlapped.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)****“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;¹⁷ 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.

“[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.

¹⁷It was agreed that the *travaux préparatoires* should reflect the understanding that the offence may be committed in whole or in part in the territory of the State party.

“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.”

Notes by the Secretariat

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, *inter alia*, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 50, paragraphs 3 and 4, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. At its fifth session, the Ad Hoc Committee provisionally approved article 50 of the draft convention (see A/AC.261/16, para. 25).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 42
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

- (a) The offence is committed in the territory of that State Party; 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 4 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 23, 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 23, 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.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with 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. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with 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.

C. Interpretative notes

The interpretative note on article 42 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 41) is as follows:

Paragraph 1

Subparagraph (a)

The offence might be committed in whole or in part in the territory of the State party.

Chapter IV

International cooperation

Notes by the Secretariat

The initial title of chapter IV of the draft convention read “Promoting and strengthening international cooperation”. At the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), the title was amended to read “International cooperation” (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

Article 43. International cooperation

A. Negotiation texts

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“[Article 50 bis¹
“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] and shall assist each other, to the extent possible under their domestic legal system, in investigations into administrative offences, as well as in civil and administrative proceedings.]

“[2. In addition to article 53, paragraph 8, of this Convention, States Parties shall consider adopting legislative and administrative measures to provide that assistance in relation to investigations of administrative offences and civil and administrative proceedings shall not be refused on the ground of bank secrecy [or taxation provisions].]”^{2, 3, 4}

¹ The insertion of this article was proposed by Cameroon, Mexico, the Netherlands and Thailand following the second reading of the draft text of this chapter, at the fourth session of the Ad Hoc Committee, at the request of the Vice-Chairman with responsibility for this chapter of the draft convention (A/AC.261/L.164). The Ad Hoc Committee did not review this text after its distribution. The original submission contained only one paragraph. Paragraph 2 has been inserted as a proposal of the informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58.

² The informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58 was of the view that this was the best place to place the words from article 64, former paragraph 2, that the Vice-Chairman requested that the working group consider in the context of article 58. However, delegations had different views as to whether it was desirable to include the bracketed language at all.

³ Two other formulations were suggested by delegations: “In addition to paragraph 8 of article 53, States Parties shall consider adopting legislative and administrative measures to provide that assistance in relation to proceedings other than criminal proceedings shall not be refused on the ground of bank secrecy [or taxation provisions].” The second proposed alternative was to replace article 50 bis with the following: “In addition to paragraph 8 of article 53, States Parties shall consider assisting each other to the extent possible under their domestic legal system in civil and administrative proceedings related to offences covered by this Convention.”

⁴ Some delegations indicated that they had serious difficulties with this paragraph and could not adopt such measures.

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.4)***

“*[Article 50 bis*⁵
“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.⁶

“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.]”⁷

Notes by the Secretariat

1. At its sixth session (Vienna, 21 July-8 August 2003), the Ad Hoc Committee provisionally approved article 50 bis of the draft convention (see A/AC.261/22, para. 22).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

⁵ 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.

⁶ 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.

⁷ One delegation considered that this paragraph should be included in the *travaux préparatoires*.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 43
International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

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

Article 44. Extradition

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

*“Article 51
“Extradition*

“Option 1¹

“1. This article shall apply to the offences covered by this Convention, [and in cases]² where the person who is the subject of the request for extradition is located 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. 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 the latter offences.³

“3. 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.]⁴

“4. 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.

¹ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

⁴ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) and based on article 16 of the Organized Crime Convention.

“5. States Parties that make 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

“(b) If they do 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.

“6. 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.

“7. 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.

“8. 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.

“9. 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.

“10. 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.

“11. 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 10 of this article.

“12. 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 that has been imposed under the domestic law of the requesting Party or the remainder thereof.

“13. 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.

“14. 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.

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

“16. 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.

“17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

“Option 2⁵

“1. In the event the persons who have committed crimes covered by this Convention are in the territory of the State Party from which their extradition is requested, extradition shall be executed, provided that the crime for which the extradition request is made is a crime in both the requesting and the requested States Parties.

“2. A crime for which this article is applied shall be deemed a crime included in all kinds of extradition agreements existing between States Parties. States Parties shall include such extraditable crimes in agreements between themselves.

“3. Extradition shall be executed in compliance with the legal rules of the requesting and requested States Parties.

“4. In the event that a State Party making extradition conditional on the existence of an extradition agreement receives a request for return from a State Party with which it does not have an extradition agreement, it shall consider this Convention sufficient legal basis for extradition concerning the crimes covered by this Convention.

⁵ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

“5. Bound by its own domestic law and its own extradition agreements, in cases where the requesting State Party is satisfied that the situation is critical and urgent and when the requesting State Party so requests, the requested State Party shall take the appropriate measures, including surveillance, to ensure that the person whose extradition is requested and who is in its custody is present throughout the extradition procedure.

“6. If the extradition requested for the implementation of penalties covered by this Convention is refused on the ground that the person whose extradition is required is a citizen of the requested State Party, to the extent allowed by the domestic law of the requested State Party, the extradition shall be carried out when the enforcement of the penalty given or the remainder of it, in accordance with the domestic law of the requesting State Party, can take place in the territory of the requested State Party, upon the application of the requesting State Party.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 51⁶

“Extradition⁷

“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 located 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.⁸

“2. If the request for extradition includes several separate serious crimes,⁹ some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.¹⁰

“3. 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

⁶ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (see A/AC.261/3 (Part III)).

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that the text of this article was almost identical to that of article 16 of the Organized Crime Convention. On several occasions during the first reading, many delegations stressed that departure from the text of that Convention might not be advisable, in view of the fact that it was very recent and the product of considerable negotiations. According to those delegations, deviations from that text should be undertaken only when necessary due to the specific nature or requirements of the draft convention against corruption. Many other delegations pointed out that the Organized Crime Convention should be the point of departure for many provisions throughout the draft convention against corruption, but every effort should be made to improve the text and include in this convention the provisions that were necessary to deal with the multiple aspects of corruption.

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that “dual criminality” might not be required in the future convention if it was sufficiently clear which offences would be covered.

⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed the view that while the notion of “serious crime” had relevance for and had been defined in the Organized Crime Convention, it might not be appropriate in the context of this draft convention.

¹⁰ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

none of the offences set forth in this Convention shall be considered a political offence.]^{11, 12}

“4. 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 may¹³ consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

“5. 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

“(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.

“6. 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.

“7. 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.

“8. States Parties shall, subject to their domestic law, endeavour¹⁴ to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

“9. 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.

“10. 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

¹¹Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

¹²During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the text in square brackets be retained. Several other delegations expressed the view that it was premature to pronounce on the retention of the bracketed text because the offences to be covered by the future convention had not been defined. In the view of those delegations, the nature of the convention might make the inclusion of a political offence exception relevant.

¹³During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the content of this paragraph become obligatory, with the substitution of the verb “shall” for the verb “may”. Many other delegations held the view that caution would be advisable, in view of the fact that this formulation was identical to that of the Organized Crime Convention and had been the result of prolonged negotiation.

¹⁴During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed the deletion of the word “endeavour”. Other delegations held the view that every effort should be made not to deviate from the formulation of the Organized Crime Convention.

[solely on the ground that he or she is one of its nationals],¹⁵ 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.¹⁶

“11. 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 10 of this article.

“12. 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.¹⁷

“13. 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.

“14. 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

¹⁵During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the text in square brackets be retained. Several other delegations desired the deletion of the bracketed text.

¹⁶Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (article 16 of the Organized Crime Convention).

¹⁷During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that paragraphs 10-12 of this article be amended to read as follows (A/AC.261/L.49/Add.2):

“10. 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 authorities 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.

“11. 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, the State Party seeking the extradition of the person shall agree to consider such conditional extradition or surrender sufficient to discharge the obligation set forth in paragraph 10 of this article.

“12. If extradition, sought for purposes of enforcing a sentence, is refused, the requested State 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.”

opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.¹⁸

"15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.¹⁹

"16. 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.

"17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition."

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

"Article 51 "Extradition

"1. This article shall apply to the offences covered by this Convention [established by the States Parties in accordance with 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.²⁰

"[2. Notwithstanding the provisions of paragraph 1 of this article, States Parties whose law so permits may request the extradition of a person for any of the offences established in articles [...] of this Convention that are not punishable under the domestic law of the requested State Party.]²¹

"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.²²

¹⁸During the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico and Colombia withdrew their proposals for article 41 (Progressive development and harmonization of national legislation) (for the text, see A/AC.261/3 (Part II), options 1 and 2, respectively). Mexico did so on the understanding that paragraph 4 would be moved to article 40 (Prosecution, adjudication and sanctions), that paragraph 5 would be moved to an appropriate article under chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 14 bis of article 51.

¹⁹During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. Many delegations expressed a strong preference for its retention, as it corresponded to a provision of the Organized Crime Convention that included corruption as one of the offences to be established.

²⁰As mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that "dual criminality" might not be required in the future convention if it was sufficiently clear which offences would be covered. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. Other delegations felt that this language was an inappropriate transplant from the Organized Crime Convention that needed to be clarified.

²¹This proposal was made by Colombia during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this proposal after its distribution.

²²As mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed the view that, while the notion of "serious crime" had relevance for and had been defined in the Organized Crime Convention, it might not be appropriate in the context of the present draft convention. This position was

“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.]²³

“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 [shall]²⁴ 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

“(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.

reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee, when many delegations recommended the deletion of this paragraph. Other delegations suggested that the paragraph should be retained after being reformulated to correspond more to the needs of this convention.

²³During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, 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. 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.

²⁴While some delegations supported the use of “shall” in this paragraph, other delegations said that such a change would contravene established international practice in this area and strongly favoured retaining the formulation from the Organized Crime Convention. Some delegations indicated that such a change would be impossible for them to accept.

“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.²⁵

“16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.²⁶

“17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample

²⁵During the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico and Colombia withdrew their proposals for article 41 (for the text, see A/AC.261/3 (Part II), options 1 and 2, respectively). Mexico did so on the understanding that paragraph 4 would be moved to article 40, that paragraph 5 would be moved to an appropriate article under chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 15 of article 51. The delegation of Egypt proposed a new version of article 41 (A/AC.261/L.49). However, in view of the withdrawal of the proposals of Mexico and Colombia and the subsequent deletion of the article, Egypt indicated that it would not insist on its proposals unless the Ad Hoc Committee returned to the matter at a later stage. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations indicated that this idea should also be included in article 53.

²⁶During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. Many delegations expressed a strong preference for its retention, as it corresponded to a provision of the Organized Crime Convention that included corruption as one of the offences to be established.

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.”

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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.²⁷

“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.²⁸

“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.]²⁹

“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.

²⁷The Ad Hoc Committee might revert to this paragraph at its sixth session in order to decide whether to use the expression “offences covered by this Convention”.

²⁸At 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.

²⁹During 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 would revert to this matter at its sixth session.

“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

“(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.”

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 51 of the draft convention, subject to a decision on whether to use the phrase “offences covered by this Convention” or retain the phrase “offences established in articles [...] of this Convention” in paragraph 2 and except for paragraphs 3 and 4 (see A/AC.261/16, para. 25).

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“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 accordance with this Convention that are not punishable under its own domestic law.

“3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences covered by this Convention, the requested State Party may apply this article also in respect of those offences.³⁰

“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. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

“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 or 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

“(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.

³⁰The Russian Federation proposed the following language for this paragraph (see A/AC.261/L.218):

“3. If the request for extradition includes several separate crimes, some of which are not covered by this Convention but are punishable under the law of both States Parties by deprivation of liberty for a maximum period of not less than four years or by a more severe penalty, the requested State Party may apply this article also in respect of those offences.”

“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 State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State 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 these 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.”

Notes by the Secretariat

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 51, paragraphs 1 and 3, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. In addition to the above-mentioned recommendation, the consistency group decided to recommend to the Ad Hoc Committee that the phrase “offences covered by this Convention” be used in paragraph 2 of article 51 (see A/AC.261/24 and Corr.1, para. 13).

4. At its sixth session, the Ad Hoc Committee provisionally approved paragraphs 2-4 of article 51 of the draft convention (see A/AC.261/22, para. 22).

5. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 44
Extradition*

1. This article shall apply to the offences established in accordance with 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 covered by this Convention that are not punishable under its own domestic law.

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

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. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

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 or 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

(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 State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State 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 these 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 45. Transfer of sentenced persons

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 52¹

“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.”

Notes by the Secretariat

1. There were no comments on this article during the first reading of the draft text, at the second session of the Ad Hoc Committee.

2. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 52 of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

3. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 52 of the draft convention (see A/AC.261/16, para. 25).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

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) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 17 of the Organized Crime Convention.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 45

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 established in accordance with this Convention in order that they may complete their sentences there.

Article 46. Mutual legal assistance

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 53

“Mutual legal assistance

“Option 1¹

“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 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.

“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;

¹Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

“[(j) Identifying and tracing funds of illicit origin derived from acts of corruption;

“(k) Returning such funds to their countries of origin.]²

“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.

“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 these 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.

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“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;

“(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 procedure 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 videoconference 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.

“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, *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 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 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.

“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.³

“Option 2⁴

“1. States Parties shall afford one another the widest measure of mutual legal assistance in criminal and non-criminal investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article [...] [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption.

“2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, 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.

“3. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.

³ See article 18 of the Organized Crime Convention.

⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“4. 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 freezing, and seizures;

“(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; and

“(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

“5. 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.

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

“7. 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.

“8. For the purposes of paragraph 7 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; and

“(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.

“9. Unless the State Party from which a person is to be transferred in accordance with paragraphs 7 and 8 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 he or she 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.

“10. 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. The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.

“11. 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.

“12. A request for mutual 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.

“13. 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, which should preferably be specified in the request.

“14. The requesting State Party shall provide prompt notification when it no longer requires the assistance requested.

“15. 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.

“16. The requesting State Party may request 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.

“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. 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.

“19. 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.

“20. 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, *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 offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; and

“(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.

“21. 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.

“22. Reasons shall be given for any refusal of mutual legal assistance.

“23. 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.

“24. Before refusing a request pursuant to paragraph 20 of this article or postponing its execution pursuant to paragraph 23 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.

“25. Without prejudice to the application of paragraph 9 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.

“26. 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.

“27. 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; and

“(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.

“28. 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.

“Option 3⁵

“1. States Parties shall provide all kinds of necessary legal assistance to one another during the investigation and prosecution of crimes covered by this Convention. Legal assistance concerning the same legal proceeding being carried out in the territories of both States Parties shall be provided based on the principle of mutuality.

“2. Legal assistance shall cover the following under the scope of this Convention:

“(a) Collecting evidence and taking statements from people;

“(b) Effecting service of judicial documents;

⁵Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

“(c) Taking the necessary research measures during investigation and prosecution and enforcing seizure;

“(d) Examination of objects and places;

“(e) Exchange of expert reports;

“(f) Exchange of originals or certified copies of all kinds of document;

“(g) Exchange of all other kinds of information and document, provided that this is in compliance with the law of the requested State Party.

“3. Legal assistance shall be afforded in cases where the State Party that is providing the information and documents believes that such shall be useful in an investigation or prosecution carried out in another State Party, even if a request has not been made.

“4. The requesting State Party shall not transfer such information and documents to third States Parties without the permission of the requested State Party.

“5. The provisions of this article shall not affect obligations arising from other bilateral or multilateral conventions concerning mutual legal assistance.

“6. States Parties shall not prevent the implementation of this article on the ground of bank secrecy.

“7. Requests made pursuant to this article shall not be fulfilled when the event forming the subject of the request is not a crime in both the requesting State Party and the requested State Party. The requested State Party may provide legal assistance in an event that is considered a crime by the requesting State Party, irrespective of whether it is a crime under its local law or not.

“8. If persons who are in the territory of a State Party are requested for assistance during identification or testimony or for collecting evidence during the investigation or prosecution of a crime covered by this Convention and which has been committed in another State Party, such persons may be transferred, provided that the following conditions are fulfilled:

“(a) If the person agrees to this of his or her own free will;

“(b) If the authorized officials of both States Parties agree.

“9. For the purposes of paragraph 8 of this article:

“(a) The State Party to which the person is transferred shall have the authority and obligation to keep the transferred person in custody, unless otherwise requested or authorized by the State Party sending the person;

“(b) The State Party to which the person is transferred shall return the person without delay on the date it has agreed or will agree on with the State Party sending the person;

“(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;

“(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.

“10. The person transferred cannot be in any way prosecuted, detained or punished or his personal freedom limited in any other way in situations set forth in paragraphs 8 and 9 of this article without the consent of the State Party sending that person.

“11. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for legal assistance, to transmit such requests or to execute them.

“12. Requests shall be made in writing and in the language of the country the request is being made by. In emergencies, requests may be made orally, provided that they are confirmed in writing.

“13. The following shall be included in the request:

“(a) The name of the requesting authority;

“(b) The main subject of the investigation and prosecution forming the subject of the request and the name of the authority performing the investigation or prosecution;

“(c) A summary of the relevant facts, in requests other than for service of judicial documents;

“(d) A description of the assistance and procedure requested by the requesting State Party;

“(e) Information such as the identification and address of the person in question;

“(f) The aim of the request for information, document or action.

“14. The requesting State Party may require that the requested State Party keep confidential the elements and main features of the request, except to the extent necessary to execute the request.

“15. Mutual legal assistance may be refused when:

“(a) The request has not been made in accordance with the provisions of this article;

“(b) The requested State Party sees a possibility that the execution of the request may affect its own independence, security, public order or other vital interests;

“(c) The requested State Party has forbidden the requested procedure by its domestic law, in the event a similar crime is subject to investigation, prosecution or judicial proceedings under its own jurisdiction;

“(d) The execution of the request for mutual legal assistance would violate the legal system of the requested State Party.

“16. In the event mutual legal assistance is refused, the reasons for refusal shall be given.

“17. A requested State Party shall afford mutual legal assistance as soon as possible and if any possible time limit has been suggested, preferably in the request, for reasons stated by the requesting State Party, this request shall be taken into full consideration. The requested State Party shall respond to reasonable requests by the requesting State Party on progress on its handling of the request. The requesting State Party shall inform the requested State Party immediately in the event the requested assistance is no longer needed.

“18. Mutual legal assistance may be postponed by the requested State Party on the ground that such assistance may interfere with an ongoing investigation, prosecution or judicial proceeding.

“19. Without prejudice to the implementation of paragraph 10 of this article, a witness, expert or other person accepting to give evidence or to help with an investigation, prosecution or judicial proceeding in the territory of the requesting State Party, upon the request of that State Party, cannot be prosecuted, detained or punished or his personal freedom limited in any other way due to actions, omissions or convictions prior to leaving the territory of the requesting State Party. Such safe conduct shall end either within fifteen days of the official notification that the presence of the witness, expert or other person is no longer required by the judicial authorities or at the end of any period decided on by the States Parties, if the witness, expert or other person remains in the territory of the requesting State Party voluntarily or returns of his or her own free will after leaving.

“20. The normal expenses of executing the request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If the execution of the request will require substantial or extraordinary expenditures, States Parties shall consult to determine under which terms and conditions the request will be executed and how the costs shall be borne.

“21. The requested State Party:

“(a) Shall provide to the requesting State Party the government records, documents or information that it has and that may be revealed to the public under its domestic law;

“(b) Shall provide, in whole or in part, the government records, documents or information that it has and that may not be revealed to the public under its domestic law to the requesting State Party at its own discretion.

“22. States Parties shall evaluate the possibility of concluding bilateral or multilateral agreements or arrangements in order to give practical effect to the provisions of this article, to serve its purposes or to enhance its provisions, as necessary.”

Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)**

“Article 53^{6, 7}

“Mutual legal assistance^{8, 9}”

“1. States Parties shall afford one another the widest measure of mutual legal assistance in [criminal and non-criminal]¹⁰ investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention [, as provided for in article [...] [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption].¹¹

“2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties,¹² 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.

“[2 bis. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating, freezing and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.]¹³

⁶The draft text of this article is the product of a merger of the proposals of Austria, Colombia and the Netherlands, which had previously appeared as option 1, and Mexico, which had previously appeared as option 2 (A/AC.261/L.68). The merger was carried out after the first reading of the draft text, at the second session of the Ad Hoc Committee, and pursuant to a request by the Chairman.

⁷During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 3 (see A/AC.261/3 (Part III)).

⁸During 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, one that 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”.

⁹During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to regroup the paragraphs of article 53 in five sections (for the full text of the proposal, see A/AC.261/L.49/Add.2). Belarus suggested that article 53 should be divided into separate articles relating to the provision of mutual legal assistance, requests for legal assistance and the procedure for executing requests for legal assistance (see A/AC.261/L.59/Add.2).

¹⁰Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). One delegation (Libyan Arab Jamahiriya) was of the view that retaining only the word “criminal”, which appeared between square brackets, would require changing the title of the article to read “Mutual judicial assistance”, since the present title covered all kinds of legal assistance, whether judicial or non-judicial, in non-criminal matters or by non-judicial authorities.

¹¹Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). The Russian Federation proposed to add the following new paragraph after paragraph 1:

“In cases of incompatibility in the formulation of definitions of offences in respect of which legal assistance is requested, States Parties shall proceed not from the specific formulations contained in the relevant articles of their criminal law defining acts as offences, but from the fundamental nature (fundamental elements) of the offences covered by this Convention.”

¹²Minor agreed change.

¹³Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“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 [freezing, and]¹³ seizures [, and freezing];¹⁴

“(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 [, freezing] 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.]¹⁵

“[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.]¹⁴

“[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.]¹⁴

“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.

¹⁴Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

¹⁵Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed doubt as to whether these subparagraphs should be included in this article.

“[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 these paragraphs if they facilitate cooperation.]¹⁴

“[8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.]¹⁶

“[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.]¹⁴

“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;

“(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.

¹⁶Mexico was of the opinion that paragraph 8 could be deleted in the light of the proposal of article 58 on bank secrecy.

“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 [The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.]¹³

“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.]¹⁴

“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 procedures¹⁷ 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 videoconference 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.]¹⁴

“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.

“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 or other essential interests;¹⁸

“(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 offence,¹⁷ 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.

¹⁷Minor agreed change.

¹⁸During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations suggested consideration of an additional basis for refusing mutual legal assistance, to deal with politically motivated requests. According to those delegations, the phrase “essential interests” in the text of the Organized Crime Convention was understood to allow States parties to decline to provide assistance when a request was politically motivated. Those delegations questioned whether the same understanding would be sufficient to meet their concerns in the context of the future convention against corruption.

“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 request information on the status and progress of measures taken by the requested State Party to satisfy its request.]¹³ 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. [The costs of transfer of a witness, expert or other person to the territory of the requesting State Party should be borne by the requesting State Party.]¹⁹

“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;

¹⁹Text proposed by Mexico.

“(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.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 53

“Mutual legal assistance²⁰

“1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations,²¹ prosecutions and judicial proceedings in relation to the offences covered by this Convention.^{22, 23}

“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.

“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;

²⁰During 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.

²¹During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was suggested that the text of the Organized Crime Convention would be preferable. Several delegations were attracted to the idea of introducing a separate article to cover assistance that might be provided in non-criminal matters, in view of the nature of the draft convention (see article 50 bis (International cooperation)).

²²Regarding the formulation to express the scope of the assistance, consistency with paragraph 1 of article 51 (Extradition) would need to be assured, once a decision had been reached on whether the text in square brackets contained in that paragraph would be deemed preferable.

²³Following the second reading of the draft text at the fourth session of the Ad Hoc Committee, the Russian Federation proposed to add the following new paragraph after paragraph 1 (A/AC.261/L.170):

“In cases of incompatibility in the formulation of definitions of offences in respect of which legal assistance is requested, States Parties shall proceed not from the specific formulations contained in the relevant articles of their criminal law defining acts as offences, but from the fundamental nature (fundamental elements) of the offences covered by this Convention.”

“(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.]²⁴

“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.

“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.²⁵

²⁴Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). As already mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed doubt as to whether these subparagraphs should be included in this article. This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

²⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. Some other delegations argued strongly in favour of its retention.

“8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.²⁶

“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.²⁷

“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;

“(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

²⁶During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. An informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of article 58 recommended that the Ad Hoc Committee consider the text of paragraphs 1 (with the exception of the first sentence) and 2 of article 58 (as contained in A/AC.261/Rev.1/Add.1) in the context of this paragraph. The text of these paragraphs is as follows:

“1. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

“2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.”

²⁷During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation expressed concern about the wording of this paragraph. Another delegation (Brazil) proposed to amend this paragraph to read as follows:

“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.”

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 [or authorities] 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 videoconference 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.

“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;²⁸

“(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 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.

²⁸During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations suggested the deletion of the words “or other essential interests”. Other delegations suggested retaining the subparagraph in its current form, which was identical to the text of the Organized Crime Convention, for reasons of consistency and supplementing it with the interpretative note from the *travaux préparatoires* of that Convention in order to reproduce the same understanding expressed in that note. One delegation recalled that the formulation of this subparagraph was identical to the text of the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex).

“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.²⁹

“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;

²⁹It was agreed that the *travaux préparatoires* should indicate that many of the costs arising in connection with compliance with requests made pursuant to article 53, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. It was further agreed that 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.

“(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.”

Fifth Session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“Article 53

“Mutual legal assistance³⁰

“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.

“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;

³⁰At its fifth session, the Ad Hoc Committee decided to refer the matter 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 to the consistency group, established by the Committee to ensure consistency within the text of the draft convention and between all the language versions of the draft convention.

“[(j) Identifying, freezing and tracing funds of illicit origin derived from acts of corruption;

“(k) Returning such funds to their countries of origin.]³¹

“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.

“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.³²

³¹The 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.

³²At 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.

“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;

“(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 videoconference 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.³³

“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 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.

³³It was agreed that 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.

“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.

“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.”

Notes by the Secretariat

1. At its fifth session, the Ad Hoc Committee provisionally approved article 53 of the draft convention, except for paragraphs 3 (j) and (k) and 9 (see A/AC.261/16, para. 25).

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 53

“Mutual legal assistance

“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.

“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 the proceeds of offences covered by this Convention, in accordance with the provisions of chapter V;

“(k) The recovery of assets, in accordance with the provisions of chapter V.

“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.

“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.

“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;

“(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 videoconference 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.³⁴

“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, *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 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 the status, and progress in its handling, of

³⁴It was agreed that the *travaux préparatoires* would 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.

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.³⁵

“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.”

³⁵It was agreed that the *travaux préparatoires* would indicate that many of the costs arising in connection with compliance with requests made pursuant to article 53, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. It was further agreed that the *travaux préparatoires* would also 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.

Notes by the Secretariat

2. During the sixth session of the Ad Hoc Committee, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention reached the conclusion that, in view of the nature of the obligations, the phrase “offences covered by this Convention” should be retained in paragraphs 1 and 10 of article 53 of the draft convention (see A/AC.261/24 and Corr.1, para. 8).

3. At its sixth session, the Ad Hoc Committee provisionally approved subparagraphs (j) and (k) of paragraph 3, of the draft convention (see A/AC.261/22, para. 22).

4. Paragraph 9 continued to remain under consideration by the Ad Hoc Committee. Brazil proposed to amend that paragraph to read as follows (see A/AC.261/L.225):

“9. When a request for mutual legal assistance is made in respect of an offence covered by this Convention that is not an offence under the domestic law of the requested State Party, the requested State Party shall:

“(a) Without prejudice to the fundamental principles of its domestic law, render assistance in the form of non-coercive measures; and

“(b) Subject to its domestic law, consider providing assistance in the form of coercive measures.”

Italy suggested the following amended text for this paragraph (see A/AC.261/L.226):

“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 shall:

“(a) To the extent permitted by its domestic law, grant assistance sought that does not involve coercive action and, when the granting of assistance depends on a discretionary decision, give favourable consideration to the request for assistance;

“(b) Subject to its domestic law, consider providing assistance that involves coercive action.”

5. Informal consultations to reach an agreement on the text of paragraph 3 were conducted by three informal open-ended working groups convened for that purpose. The first informal open-ended working group, coordinated by Turkey, agreed to submit to the Ad Hoc Committee for consideration the following text (see A/AC.261/L.240):

“9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, [except under exceptional circumstances,] this ground for refusal shall only apply [, to the extent permitted by its domestic law,] insofar as the assistance sought involves coercive action. Coercive action shall be defined by the requested State Party.”

The second informal open-ended working group was coordinated by South Africa at the request of the Chairman. It submitted for consideration text on paragraph 9 and

further proposed the insertion of two new paragraphs 9 bis and 9 ter as follows (see A/AC.261/L.251):

“9. States Parties may decline to provide mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, to the extent permitted by the domestic law of a State Party, this ground for refusal shall only apply insofar as the assistance sought involves coercive action. Coercive action shall be defined by the requested State Party.

“9 bis. Each State Party shall consider taking such measures as may be necessary to enable it to provide assistance pursuant to this article in the absence of dual criminality.

“9 ter. States Parties may decline to provide assistance pursuant to this article if, in the opinion of the requested State Party, the importance of the case to which the request relates does not justify the taking of the action sought and in other exceptional circumstances.”

The working group further clarified that the word “importance” in paragraph 9 ter referred to the cost of the request in relation to the severity of the underlying offence or the amount of money at stake. It might also include an assessment of the importance of the requested evidence to the underlying case. States parties were encouraged to consult one another before declining a request for assistance under this paragraph.

6. The third open-ended working group was convened by the Vice-Chairman with responsibility for chapter IV (International cooperation) of the draft convention and the United Kingdom. The basis for the consultations was the text of the article contained in rolling text in document A/AC.261/3/Rev.5 and the proposal submitted by the Vice-Chairman following the conclusion of the sixth session of the Ad Hoc Committee for consideration by the Ad Hoc Committee was as follows:

“1. The requested State Party, in reacting to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purpose of this Convention, as set out in article 1.

“2. States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, in accordance with the basic concepts of its legal system, [render] [give favourable consideration to] assistance that does not involve coercive action. Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.”

The Vice-Chairman recalled that, at the end of the sixth session, there appeared to be agreement that the new convention would go beyond the formula of the Organized Crime Convention and that the question to be addressed was to what extent. France circulated a non-paper containing an informal proposal put forward in an effort to build on the proposal presented above and offer an alternative formulation that might command consensus. The informal proposal put forward by France would read as follows:

“1. The requested State Party, in reacting to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention as set out in article 1.

“2. States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality.

“3. However, a requested State Party shall, in accordance with its domestic law, give favourable response to the request when the assistance does not involve coercive action.

“4. Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.”

The discussion that ensued focused on paragraph 3 of the informal proposal made by France. Some delegations pointed out their preferences for stronger language that would express the obligation to States parties to render assistance even in the absence of dual criminality, but recognized the sensitive nature of the matter and the difficulties faced by other delegations to accept such an obligation. Therefore, those delegations were disposed to consider the new proposal favourably. However, the reference to domestic law might be too broad, in essence maximizing the discretion available to the requested party and thus weakening the provision. According to those delegations, it would be preferable to make reference to either the fundamental principles of domestic law or to basic concepts of domestic law. Some delegations expressed the view that reference to domestic law was necessary because of the flexibility it gave to the provision. Such flexibility was necessary in making decisions regarding rendering mutual legal assistance in the absence of dual criminality. Those delegations were of the view that the reference to fundamental principles of domestic law might not be adequate in this particular case. Some of those delegations were favourably disposed to making reference to the basic concepts of domestic law, as the expression had a clear legal meaning and had been used in both the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³⁶ and the Organized Crime Convention. Another issue discussed was whether the new formulation should be accompanied by a note for the *travaux préparatoires* stating that the definition of “coercive measures” would be left to the requested State party. It was argued by some delegations that this note was a necessary complement of the new formulation, while according to other delegations the notion that the requested State party would determine which measures were coercive was incipient in the reference to domestic law. One delegation was concerned about the possibility that the new convention might generate a great number of requests for mutual legal assistance that might not all be of high importance. That delegation was of the view that a clause that would permit a screening of requests, accompanied with some flexibility in responding, might be appropriate. A comprehensive overview of the discussion presented above was contained in document A/AC.261/CRP.11. The text proposed by the Vice-Chairman following the informal consultations on paragraph 9 of article 53 was contained in document A/AC.261/L.254.

7. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered the remaining paragraph 9 of article 53 and finalized and approved the article, taking into account converging positions, as presented above, and specifically the last proposal contained in document A/AC.261/L.254. The final text of article 53, including paragraph 9, is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103,

³⁶United Nations, *Treaty Series*, vol. 2225, No. 39574.

draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 46
Mutual legal assistance

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 26 of this Convention in the requesting State Party.

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 proceeds of crime in accordance with the provisions of chapter V of this Convention;
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

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.

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. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

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;

(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 videoconference 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.

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, *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 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 the status, and 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.

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.

C. Interpretative notes

The interpretative notes on article 46 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 42-44) are as follows:

Paragraph 9

Subparagraph (b)

(a) The requested State party would define “coercive action”, taking into account the purposes of the Convention;

Paragraph 19

(b) 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 proceedings for which that information was requested, unless authorized to do so by the requested State party;

Paragraph 28

(c) Many of the costs arising in connection with compliance with requests made pursuant to article 46, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. Further, 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.

Article 47. Transfer of criminal proceedings

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 54

“Transfer of criminal proceedings

“Option 1¹

“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.

“Option 2²

“For the prosecution of a crime covered by this Convention, States Parties shall consider the transfer of the proceeding from one State to the other for the concentration of the prosecution, especially in cases where more than one jurisdiction is involved, where they are of the opinion that proper administration of justice will benefit from such transfer.”

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) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 21 of the Organized Crime Convention.

² Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 54³

“Transfer of criminal proceedings⁴

“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.”⁵

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.3)

“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.”

Notes by the Secretariat

1. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)).

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed that the title of this article be changed to “Communication of criminal proceedings” and that the article be amended to read as follows:

“States Parties shall consider the possibility of communicating to one another proceedings for an offence covered by this Convention in cases where such communication is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved.”

According to the delegation of Algeria, the concept of transfer of proceedings was problematic, as it might imply abandonment of the principle of jurisdictional sovereignty. Some delegations expressed similar concerns. Some other delegations pointed out that the concept of transfer of proceedings was relatively modern and that was the reason for the non-obligatory formulation of the article. The concept of transfer of proceedings was not perceived as a threat to the sovereignty of States, but as a formula to ensure the efficient administration of justice.

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this article be amended to read as follows:

“States Parties shall, in the interests of proper and expedient administration of justice, and in accordance with their domestic legislation, facilitate the transfer of criminal proceedings from one State Party to another for offences covered by this Convention, in particular in cases where several jurisdictions are involved.”

India proposed the insertion of a second paragraph, which would read as follows (see A/AC.261/L.74):

“2. The transfer of criminal proceedings will be with the mutual consent of the concerned States Parties and in the absence of such consent the initiating State Party will continue with the proceedings until their conclusion.”

consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 54 of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

2. At its fifth session, the Ad Hoc Committee provisionally approved article 54 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 47
Transfer of criminal proceedings*

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with 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 48. Law enforcement cooperation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 55

“Law enforcement cooperation

“Option 1¹

“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, 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;

“(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 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;

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) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 27 of the Organized Crime Convention (with slight changes).

“(e) 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 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 [corruption and criminal acts related specifically to corruption]² [acts of corruption]³ committed through the use of modern technology.

“Option 2⁴

“1. States Parties shall cooperate closely with one another, in compliance with their domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the crimes covered by this Convention. Each State Party shall adopt effective measures, especially in the following matters:

“(a) If the States Parties concerned find it appropriate, developing channels of communication between authorities, agencies and services to provide secure and rapid exchange of information, including links with other criminal activities, and to create them where necessary, regarding all aspects of the crimes covered by this Convention;

“(b) To cooperate with all other States Parties regarding these matters in the investigation of crimes covered by this Convention:

“(i) The identification, whereabouts and activities of the persons suspected of such crimes and the location of other persons concerned;

“(ii) The movement of proceeds and assets obtained from the commission of such crimes;

“(iii) The movement of the property, equipment or other instrumentalities used or intended for use in the commission of such crimes or arising from the crimes;

“(c) To provide efficient coordination between their authorities, agencies and services and to encourage the exchange of personnel and other experts, including appointment of liaison officers, subject to bilateral agreements or arrangements between the States Parties concerned;

“(d) To exchange information with other States Parties concerning specific means and methods used to commit crimes covered by this Convention, including

² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

the use of false identities, forged, altered or false documents and other means of hiding activities concerning the crimes covered by this Convention;

“(e) To exchange information and coordinate administrative and other suitable measures taken for the early detection of crimes covered by this Convention.

“2. In order to implement this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements concerning direct cooperation between their national law enforcement agencies and, where such agreements and arrangements already exist, further develop them. In the absence of such agreements and arrangements between the States Parties concerned, the Parties may consider this Convention sufficient basis for a mutual law enforcement cooperation concerning crimes covered by this Convention. States Parties shall make full use of such agreements or arrangements, as necessary, to develop cooperation between their law enforcement agencies, including international or regional organizations.

“3. States Parties shall cooperate in order to deal with corruption committed by the use of modern technology, within their own possibilities.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 55⁵

“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:

“Option 1

“(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;

“Option 2⁶

“(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)), following the incorporation of certain of its elements into the draft text; those elements will be given further consideration at the second reading.

⁶ This subparagraph was previously subparagraph 1 (a) of article 57 and was moved here after the first reading of the draft text, at the second session of the Ad Hoc Committee, after a revision of the draft text of article 57 undertaken at the request of the Chairman (see A/AC.261/L.77).

“(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

“(i) The identity, 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;

“(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;⁷

“[(c bis) To exchange 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 concerning the crimes covered by this Convention;]^{8, 9}

“(d) 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;

“(e) 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.

“Option 1

“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 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.

“Option 2¹⁰

“2. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations questioned the relevance of this subparagraph, which came from the Organized Crime Convention, in view of the specific nature of this draft convention. Several other delegations were of the view that the relevance of the subparagraph remained undiminished.

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, this subparagraph, previously subparagraph 1 (d) of option 2, was inserted in the draft text in square brackets for further consideration at the second reading. Some delegations held the view that a binding requirement to negotiate such agreements would not be appropriate.

⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this subparagraph read as follows:

“(c bis) To exchange 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, other means of hiding activities concerning the crimes and to provide necessary items or quantities of substances for analytical or investigative purposes.”

agreements on or arrangements for direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

“3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention¹¹ committed through the use of modern technology.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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.¹² 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,¹³ 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;

“(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

¹⁰This paragraph was previously paragraph 8 of article 57 (Other cooperation measures) and was moved here after the first reading of the draft text, at the second session of the Ad Hoc Committee, after a revision of the draft text of article 57 undertaken at the request of the Chairman (see A/AC.261/L.77).

¹¹During the first reading of the draft text, at the second session of the Ad Hoc Committee, the phrase “offences covered by this Convention” was deemed to be more in line with the general formulation of this article and was thus inserted in the draft text to replace the two alternative formulations previously contained therein (see A/AC.261/3 (Part III)).

¹²Regarding the formulation to express the scope of the assistance, consistency with paragraph 1 of article 51 would need to be ensured, once a decision had been reached on whether the text in square brackets contained in that paragraph would be deemed preferable.

¹³It was agreed that 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.

“(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;¹⁴

“(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.”¹⁵

Notes by the Secretariat

1. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 55 of the draft convention (see A/AC.261/16, para. 25).

2. During the sixth session of the Ad Hoc Committee (Vienna, 21 July-8 August 2003), the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention reached the conclusion that, in view of the nature of the obligations, the phrase “offences covered by this Convention”

¹⁴It was agreed that 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.

¹⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Chile proposed to add a new article after article 55 to read (see A/AC.261/L.157 and Corr.1):

*“Article [...]
 <\/i>
 <\/p>
 <\/div>
 <div data-bbox="173 833 846 878" data-label="Text">
 <p>“1. In cases in which offences covered by this Convention were committed through the use of computerized data-processing systems, computer programs or the Internet, the States Parties in which the computer equipment or the servers are located shall endeavour to extend their jurisdiction in conformity with the provisions of article 50, paragraph 5, of this Convention.<\/p>
 <\/div>
 <div data-bbox="173 877 846 923" data-label="Text">
 <p>“2. Likewise, with a view to ensuring compliance with the provisions of paragraph 1 of this article and article 53 of this Convention, the Parties shall endeavour to provide mutual legal assistance, for which purpose they may take over the systems concerned in order to establish such communications as may be necessary, employing whatever security measures may be warranted by each case.”<\/p>
 <\/div>*

should be retained in paragraphs 1-3 of article 55 of the draft convention (see A/AC.261/24 and Corr.1, para. 8).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 48

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. States Parties shall, in particular, take 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, 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;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where 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 offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(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 States 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.

C. Interpretative notes

The interpretative notes on article 48 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 45-47) are as follows:

Paragraph 1

Subparagraph (b) (i)

(a) The term “identity” should be understood to include such features or other pertinent information as may be necessary to establish a person’s identity;

Subparagraph (d)

(b) This subparagraph does not imply that the type of cooperation described therein would not be available under the Organized Crime Convention;

Paragraph 3

(c) 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 42, paragraph 1 (a), already covered the exercise of jurisdiction over offences established in accordance with the 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 that 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 46. 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 entail certain risks regarding interception by third parties, which should be avoided.

Article 49. Joint investigations

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

*“Article 56
“Joint investigations*

“Option 1¹

“States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, 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.

“Option 2²

“States Parties may conclude bilateral or multilateral agreements or arrangements regarding issues that are the subject of investigations, prosecutions or judicial proceedings carried out in one or more States; competent authorities may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreeing on each case separately. The States Parties involved shall ensure that full respect is paid to the sovereignty and independence of the State Party where such investigation is to be carried out.”

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) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 19 of the Organized Crime Convention.

² Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

*Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)**“Article 56³
“Joint investigations*

“States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, 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 [and independence]⁴ of the State Party in whose territory such investigation is to take place is fully respected.”⁵

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), the Russian Federation proposed the following language for article 56 (see A/AC.261/11):

*“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, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint groups. In the absence of such agreements or arrangements, in appropriate cases and if national law is not thereby violated, joint investigations may be undertaken by agreement on a case-by-case basis. The individuals who are members of such groups shall act only with the approval of the appropriate authorities of the State Party in whose territory the investigation is taking place. In all such cases, the sovereignty of the State Party in whose territory the investigation is taking place shall be fully respected.”

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)).

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the addition of a reference to the independence of States would enhance the draft text. The Chairman suggested the insertion of the words in square brackets for further consideration at the second reading.

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this article read as follows:

“States Parties shall conclude bilateral or multilateral agreements or arrangements in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, and their competent authorities may establish joint investigative bodies.”

Fifth session: Vienna, 10-21 March 2003***Rolling text (A/AC.261/3/Rev.3)***

*“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, 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.”

Notes by the Secretariat

2. At its fifth session, the Ad Hoc Committee provisionally approved article 56 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 49
Joint investigations*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, 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.

Article 50. Special investigative techniques

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 47

“Special investigative techniques

“Option 1¹

“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.

“2. For the purpose of investigating the offences established in accordance with 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 to continue intact or be removed or replaced in whole or in part.

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“Option 2²

“1. If basic principles of its domestic law allow it, each State Party shall take the necessary measures to allow the appropriate use of electronic or other surveillance techniques and confidential operations in its territories and in suitable places by its own authorities for the purpose of effectively combating the crimes covered by this Convention, under the conditions prescribed by its domestic law.

“2. States Parties are encouraged to conclude, when necessary, bilateral or multilateral agreements or arrangements for using such special investigative techniques at the international level within the framework of cooperation, in order to investigate crimes covered by this Convention. Such agreements and arrangements shall be concluded and implemented in full compliance with the principles of sovereign equality and independence of States and shall be carried out in strict compliance with the provisions of those agreements and 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 taken on a case-by-case basis and, when necessary, shall take into consideration the necessity to respect the jurisdiction of the State Party concerned and its financial arrangements.”

Rolling text (A/AC.261/3 (Part III))

“Article 59

“Special investigative techniques

“Option 1³

“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.

“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,

² Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

³ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

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 to continue intact or be removed or replaced in whole or in part.

“Option 2⁴

“1. If the basic principles of its domestic law allow it, each State Party shall take the necessary measures to allow the appropriate use of electronic or other surveillance techniques and confidential operations in their territories and in suitable places by their own authorities for the purpose of effectively combating the crimes covered by this Convention, under the conditions prescribed by its domestic law.

“2. States Parties are encouraged, when necessary, to conclude bilateral or multilateral agreements or arrangements for using such special investigative techniques at the international level within the framework of cooperation, to investigate crimes covered by this Convention. Such agreements and arrangements shall be concluded in full compliance with the principles of sovereign equality and independence of States and shall be implemented in strict compliance with the provisions of these agreements and 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 taken on a case-by-case basis and, when necessary, shall take into consideration the need to respect the jurisdiction of the State Party concerned and the financial arrangements.”

Second session: Vienna, 17-28 June 2002

Notes by the Secretariat

1. Article 47 was deleted during the first reading of the draft text, at the second session of the Ad Hoc Committee, as it was identical to article 59 of the draft text.

Rolling text (A/AC.261/3/Rev.1/Add.1)

“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, as appropriate, for the use of special investigative techniques by its competent authorities in its territory and for their admissibility in court for the purpose of effectively combating corruption.

⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

Such techniques may include electronic or other forms of surveillance, undercover operations and controlled delivery.^{5, 6}

“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 to continue intact or be removed or replaced in whole or in part.”

Notes by the Secretariat

2. At the fourth session of the Ad Hoc Committee, Chile referred to the pertinent provision of the domestic legislation on drugs and proposed to amend paragraph 4 of article 59 to read as follows (see A/AC.261/L.157):

“4. ‘Controlled delivery’ shall include whatever means are necessary for successful use of the technique, including intercepting the goods and allowing them to continue intact or be replaced in whole or in part.”

3. At the same session, one delegation (Algeria) proposed to replace in paragraph 4 the word “goods” with the words “proceeds of corruption” (see A/AC.261/L.154).

Fifth Session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.3)

“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

⁵ Revised version submitted after the first reading of the draft text, at the second session of the Ad Hoc Committee, by Austria, Colombia, the Netherlands, Pakistan and Turkey, pursuant to a request by the Chairman (A/AC.261/L.70).

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations questioned the relevance of controlled delivery for the purposes of the future convention. Many delegations could understand this concern but maintained that the concept of controlled delivery remained relevant and should be retained.

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.”

Notes by the Secretariat

4. At its fifth session, the Ad Hoc Committee provisionally approved article 59 of the draft convention (see A/AC.261/16, para. 25).

5. During the sixth session of the Ad Hoc Committee (Vienna, 21 July-8 August 2003), the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention reached the conclusion that, in view of the nature of the obligations, the phrase “offences covered by this Convention” should be retained in paragraph 2 of article 59 of the draft convention (see A/AC.261/24 and Corr.1, para. 8).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 50

Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

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 funds to continue intact or be removed or replaced in whole or in part.

Chapter V

Asset recovery

Notes by the Secretariat

1. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), there was extensive discussion about the architecture of chapter V. Because of the fact that the proposals for this chapter had been formulated at a time when the contents of the draft convention were not known, it was noted that there might be some overlapping with other parts of the draft convention. It was agreed that this overlapping would need to be addressed at the second reading of the draft text, following a determination of which provisions were overlapping, and to the extent that provisions included in this chapter did not add to or expand upon more general provisions found elsewhere in the draft convention. In that connection, it was pointed out that maintaining a separate chapter on the question of asset recovery had a considerable political significance, in view of the fact that the subject matter had been identified by the General Assembly as a key component of the convention. That political significance could not be neglected in examining the architecture and contents of the draft convention.

2. The initial title of chapter V of the draft convention read “Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds”. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that the title of chapter V read as follows: “Preventing and combating the transfer and laundering of illicit funds derived from acts of corruption and returning such funds” (see A/AC.261/L.71). At the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), the title was amended to read “Asset recovery”.

Article 51. General provision

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “General provisions” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article [...]”¹
“General provisions”

“1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

“(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

“(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions, in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption;

“(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall

¹ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin; and

“(d) States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.

“2. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to provide the cooperation and assistance requested by another State Party.

“3. 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.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 64²

“General provisions³

“1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

“(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

“(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and

² During the first reading of the draft text, at the second session of the Ad Hoc Committee, China proposed a new formulation for this article (see A/AC.261/L.82), which was as follows:

“Article 64

“Obligation to return illegally acquired assets

“1. This Convention recognizes the right of a country from which illegally acquired assets derive and the right of their legal owner to recover such assets. The country where the illegally acquired assets are located has an obligation to return such assets to their country of origin or to their legal owner, or to both.

“2. States Parties shall cooperate with one another in returning illegally acquired assets, with a view to combating effectively the crimes covered by this Convention and facilitating the recovery of such assets.”

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations suggested that a more appropriate title was needed for this article.

transactions in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption;

“(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin; and

“(d) States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.”^{4, 5}

“2. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to provide the cooperation and assistance requested by another State Party.”⁵

“3. 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]⁶ right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.”^{7, 8}

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations stressed the need to specify that technical assistance would be provided only upon request.

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations pointed out that there was overlap of this paragraph with other provisions of the draft convention.

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was extensive debate about the appropriateness of this term. Most delegations pointed out that the term had a special meaning, with legal implications that were not pertinent to this convention and proposed its deletion. Many delegations were conscious of the implications of the term, but thought it was important to have language that would establish the principle that assets and funds of illicit origin belonged to the State of origin. Mexico proposed to amend this paragraph to read as follows:

“3. For the purposes of this Convention, States Parties whose public funds have been embezzled by means of the commission of any of the offences covered by this Convention and have been transferred abroad shall have an exclusive right to the recovery of such funds.”

Pakistan proposed the following reformulation of this paragraph:

“3. For the purposes of this Convention, the title in the illicitly acquired assets derived from acts of corruption, irrespective of their location, shall be deemed to be vested in the affected State from which the assets originated, which shall have the [inalienable] fundamental right to their recovery and to obtain return or transfer of those assets.”

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this paragraph should become the first paragraph of the article.

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the observer for the International Criminal Police Organization suggested the inclusion of a provision identifying that organization as a channel of communication.

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 64⁹

“Specific provisions¹⁰

“1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption¹¹ by adopting, inter alia, effective measures and mechanisms for:

“(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

“(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies,¹² in the detection [and freezing]¹³ of transfers and transactions involving assets, including funds, of illicit origin derived from acts of corruption;

“(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, cooperating with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption; and

“(d) Affording one another mutual 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, including funds, of illicit origin derived from acts of corruption.¹⁴

“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]

⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, a number of delegations pointed out that there were redundancies between this article and other articles of the draft convention.

¹⁰ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed that this article should be entitled “Cooperation provisions”, “Prevention of transfer and recovery of illicitly acquired assets” or “Cooperation to prevent and combat illicitly acquired assets”. Algeria proposed to change the title of the article from “General provisions” to “Special provisions” (see A/AC.261/L.154).

¹¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was pointed out that it would be necessary to ensure consistency in the terminology used throughout this article, in line with the term to be defined in accordance with subparagraph (w) of article 2 (Definitions [Use of terms]).

¹² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the inclusion of investigative and prosecutorial authorities.

¹³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations suggested the deletion of these words, as freezing was not within the competence of the institutions and bodies referred to in this paragraph. Some delegations preferred to retain the wording.

¹⁴ After the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Ad Hoc Committee deferred a decision on the appropriate formulation and placement of this paragraph. Former paragraph 2 was deleted after the second reading of the draft text, at the fourth session of the Ad Hoc Committee, on the understanding that the question of the effect of taxation provisions on judicial and administrative cooperation in preventing and combating corruption would be considered in the context of article 58 (Bank secrecy).

right¹⁵ insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.”^{16, 17}

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

2. The rolling text presented below is the result of informal consultations coordinated by Mexico and the United Kingdom at the fifth session of the Ad Hoc Committee with a view to facilitating further deliberations and action on the formulation of the article.

Rolling text (A/AC.261/3/Rev.4)

“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.¹⁸

*[Subparagraphs (a), (c) and (d) were deleted and
subparagraph (b) was moved to article 68
(Special cooperation provisions).]*¹⁹

“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.”²⁰

¹⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations were of the view that this word should also be placed in square brackets.

¹⁶As mentioned above, during the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this paragraph should become the first paragraph of the article. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

¹⁷Following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, the Vice-Chairman with responsibility for this chapter of the draft convention requested Mexico and the United Kingdom to coordinate consultations with interested delegations with a view to formulating a revised proposal on which the Ad Hoc Committee could base further consideration of this paragraph. Those delegations had not submitted a revised text to the Secretariat at the time of submission of document A/AC.261/3/Rev.3.

¹⁸During the informal consultations, a revised text for paragraph 1 of this article was prepared by the delegation of Peru in consultation with other delegations.

¹⁹During the informal consultations, it was recommended that the content of subparagraphs (c) and (d) be revised and moved to article 74. According to that recommendation, the new provision could have been formulated 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.”

²⁰This paragraph was not considered during the informal consultations.

Sixth session: Vienna, 21 July-8 August 2003**Rolling text (A/AC.261/3/Rev.5)**

*“Article 64
“General provision*

“The return of assets pursuant to this chapter is a fundamental principle²¹ of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.”

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 64 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 51
General provision*

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

C. Interpretative notes

The interpretative note on article 51 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 48) is as follows:

The expression “fundamental principle” will not have legal consequences on the other provisions of this chapter.

²¹It was agreed that the *travaux préparatoires* would indicate that the expression “fundamental principle” will not have legal consequences on the other provisions of this chapter.

Article 52. Prevention and detection of transfers of proceeds of crime

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The articles on “Special cooperation provisions” and “Prevention” were included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article [...]”¹
“Special cooperation provisions

“... ”

Requests for application of enhanced scrutiny

“4. Upon an appropriate request from another State Party, a requested State shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Prevention], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.

¹ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

“Article [...]”¹
“Prevention”

“1. Each State Party shall establish, in accordance with its domestic law, appropriate oversight, investigative and prosecutorial institutions with sufficient authority to prevent and appropriately respond to the illicit acquisition of assets through the conduct of senior public officials and shall endeavour to endow such institutions with adequate resources to achieve those objectives.

“2. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

“(a) Issuance of advisories to financial institutions (i) on appropriate measures to identify current and former senior foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons; (ii) on appropriate records to maintain on accounts and transactions involving such persons; and (iii) on types of transactions and accounts to which such institutions should pay particular attention;

“(b) Requiring financial institutions to undertake reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts;

“(c) Requiring financial institutions to conduct enhanced scrutiny to high-value accounts sought or maintained by or on behalf of current and former senior foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

“(d) Requiring financial institutions to report to competent authorities suspicious transactions involving accounts identified in subparagraphs (a), (b) and (c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit notification or disclosure of the report to legal or natural persons involved in the transaction.

“3. States Parties shall cooperate with one another for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets, including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.²

² Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

“4. States Parties shall cooperate with one another in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the “know-your-client” principle and the reporting of suspicious activities.²

“5. States Parties shall cooperate with one another in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records 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 the identity of the true beneficiary of the transfer in question as well as an exact description of the transaction.²

“6. In connection with paragraph 5, States Parties shall cooperate with one another for the purpose of preventing fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.²

“7. Each State Party shall establish, in accordance with its domestic law, effective financial disclosure systems for its senior 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 authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.

“8. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require senior 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.

“9. States Parties shall give special consideration to agreeing with other involved States Parties that all or a portion of recovered assets should be committed to support initiatives and programmes to prevent corruption.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

Notes by the Secretariat

2. The draft text of the article on “Special cooperation provisions” appeared as article 68 in the rolling text of the draft convention contained in document A/AC.261/3/Rev.1/Add.1 with no further substantial change:

“Article 65³

“Detection [and prevention] of transfers of illicitly acquired assets

“1. Each State Party shall establish, in accordance with its domestic law, appropriate oversight, investigative and prosecutorial institutions with sufficient authority to prevent and appropriately respond to the illicit acquisition of assets through the conduct of senior⁴ public officials and shall endeavour to endow such institutions with adequate resources to achieve those objectives.

“2. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

“(a) Issuing advisories to financial institutions:

“(i) On appropriate measures to identify current and former [senior] [designated]⁵ foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons;

“(ii) On appropriate records to maintain on accounts and transactions involving such persons; and

“(iii) On the types of transactions and accounts to which such institutions should pay particular attention;

“(b) Requiring financial institutions to take reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts [as determined by the regulating and supervising State Party];⁶

“(c) Requiring financial institutions to conduct enhanced scrutiny of high-value accounts [as determined by the regulating and supervising State Party]⁶ sought or maintained by or on behalf of current and former [senior] [designated]⁵

³ Revised text submitted by Peru and the United States after the first reading of the draft text, at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (see A/AC.261/L.79).

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations were of the view that this qualification introduced an element of vagueness, which could result in problems of interpretation and application if the term were not defined. According to those delegations, the convention should set a standard and not leave the determination of seniority to States parties, as to do so might result in disparities that would hamper the application of the convention. Some other delegations considered that employment of the term “senior” might result in stigmatizing a category of public officials.

⁵ Differing opinions were expressed as to whether enhanced scrutiny was appropriate only for those foreign officials who exercised senior-level responsibilities or also for a broader range of officials, which some delegations believed would be impossible to implement and could defeat the purpose of enhanced scrutiny.

⁶ Some delegations expressed concern that the meaning of “high-value account” should be clarified with an amount or to allow for relative differences in economies.

foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

“(d) Requiring financial institutions to report to competent authorities suspicious transactions involving accounts identified in subparagraphs (a), (b) and (c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit notification or disclosure of the report to legal or natural persons involved in the transaction.

“3. States Parties shall [cooperate with one another]⁷ for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets, including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.

“4. States Parties shall [cooperate with one another]⁷ in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the “know-your-client” principle and the reporting of suspicious activities.

“5. States Parties shall [cooperate with one another]⁷ in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records 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 the identity of the true beneficiary of the transfer in question, as well as an exact description of the transaction.

“6. In connection with paragraph 5 of this article, States Parties shall [cooperate with one another]⁷ for the purpose of preventing fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.

⁷ Some delegations believed that the verb should be more precise than the verb in brackets. Peru suggested substituting the bracketed language with “implement”, “implement measures to ensure” or “aim to implement”. These and other formulations should be considered further as the commitments in this article were examined in relation to those in the articles on prevention and cooperation.

“7. Each State Party shall establish, in accordance with its domestic law, effective financial disclosure systems for its [senior] [designated]⁸ 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 authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.

“8. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require [senior] [designated]⁵ 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.

“*[Former paragraph 9 was deleted.]*”⁹

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 68

“[Special cooperation provisions]

“ ...

“2. Upon an appropriate request from another State Party, a requested State [Party] shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Detection [and prevention] of transfers of illicitly acquired assets], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.

“ ...

⁸ Differing opinions were expressed as to which officials should be covered by the financial disclosure obligations under paragraphs 7 and 8 and to whom such reports should be made.

⁹ The consensus was that this provision duplicated to a large extent other provisions in this chapter, such as article 71 (b) (Disposition of assets), and could be taken up at the time of the discussion of those articles.

“Article 65¹⁰

“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, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

“(a) Issuing advisories to financial institutions:

“(i) On appropriate measures to identify current and former [senior] [designated]¹¹ foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons;

“(ii) On appropriate records to maintain on accounts and transactions involving such persons; and

“(iii) On the types of transactions and accounts to which such institutions should pay particular attention;

“(b) Requiring financial institutions to take reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts [as determined by the regulating and supervising State Party];¹²

“(c) Requiring financial institutions to conduct enhanced scrutiny of high-value accounts [as determined by the regulating and supervising State Party]¹² sought or maintained by or on behalf of current and former [senior] [designated]¹¹ foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

“(d) Requiring financial institutions to report to competent authorities suspicious transactions¹³ involving accounts identified in subparagraphs (a), (b) and (c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit

¹⁰The text of this article is a revised version submitted by the United States, which coordinated an informal working group established by the Vice-Chairman with responsibility for this chapter of the draft convention after the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this revised text after its distribution. During the second reading, there was debate about whether there was overlap between this article and article 14 (Measures to combat money-laundering [resulting from corruption]). Some delegations suggested that several parts of this article should be merged with article 14, while others were of the view that article 14 should be transferred to this chapter and merged with this article.

¹¹As mentioned above, differing opinions were expressed as to whether enhanced scrutiny was appropriate only for those foreign officials who exercised senior-level responsibilities or also for a broader range of officials, which some delegations believed would be impossible to implement and could defeat the purpose of enhanced scrutiny. Those views were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. During that reading, some delegations suggested that the appropriate term would be “politically exposed persons”, which had been defined by the Basle Committee on Banking Supervision as follows:

“Politically exposed persons (PEPs) are individuals who are or have been entrusted with prominent public functions, including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials.”

One delegation proposed to include also “cohabitants”.

¹²Some delegations expressed concern that the meaning of the term “high-value account” should be clarified with an amount or to allow for relative differences in economies. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was continued difference of opinion as to whether a definition of this term was necessary.

¹³During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Mexico proposed to replace this expression with the words “unusual transactions” in this article, as well as wherever it appeared in the draft text.

notification or disclosure of the report to legal or natural persons involved in the transaction.¹⁴

“2. States Parties shall [implement] [adopt] measures to ensure that their banking and financial systems and their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from [offences established by this Convention] [offences established by the States Parties in accordance with this Convention] by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to [politicians or]¹⁵ public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; [detecting assets, including funds of illicit origin derived from [offences established by this Convention] [offences established by States Parties in accordance with this Convention]]¹⁶ and ordering their freezing; and facilitating the recovery of such assets by their countries of origin.¹⁷

“3. States Parties shall [implement] [adopt] measures to ensure that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no physical presence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the “know-your-customer” principle and the reporting of suspicious activities.¹⁸

“4. States Parties shall [implement] [adopt] measures to ensure that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records 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 the identity of the [true beneficiary]¹⁹ of the transfer in question, as well as an exact description of the transaction.²⁰

“5. In connection with paragraph 4 of this article, States Parties shall [implement] [adopt] measures to prevent fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and

¹⁴During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that this paragraph, and especially subparagraphs (b) and (d), should be moved to article 14 (Measures to combat money-laundering [resulting from corruption]), while one delegation expressed serious difficulties in accepting subparagraph (b). Some delegations indicated that they did not wish to convert recommendations from other sources on money-laundering best practices into legally binding language. Some delegations questioned how the whole concept of “enhanced scrutiny” could be realistically implemented, while one delegation noted that it was already implementing it.

¹⁵During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations identified this concept as being new and proposed deleting it, on the ground that it might be inappropriate to make such preferential treatment illegal in some contexts. Some other delegations thought this was a useful concept that could be explored further.

¹⁶A number of delegations expressed difficulties about this concept, as they thought it was unclear whether the reference was to the functions of public or private entities. Those delegations were of the view that the problem related to the entire paragraph.

¹⁷A number of delegations were of the view that the elements of this paragraph were sufficiently covered by article 14 and other provisions and thus that this paragraph should be deleted. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 before the third reading of the draft text.

¹⁸Some delegations were of the view that this paragraph should be moved to article 11 or article 14. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 before the third reading of the draft text.

¹⁹Some delegations pointed out that this term should be brought into conformity with the term “beneficial owner” used in article 14. Some other delegations noted that this might be a slightly different concept.

²⁰Some delegations were of the view that the concepts in this paragraph were redundant (albeit somewhat more detailed) in relation to the concepts in article 14 and other articles and thus that this paragraph could be deleted. Peru, as the author of the paragraph, indicated its intention to review it and to compare it with article 14 and other articles before the third reading of the draft text.

financial system the identity of the [true owners] of assets, including funds, and that of the [true beneficiaries] of transactions.²¹

“6. Each State Party [shall establish] [shall consider establishing], in accordance with its domestic law, effective financial disclosure systems for its [senior] [designated]²² 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 authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.²³

“7. Each State Party shall [adopt] [consider adopting] such measures as may be necessary, in accordance with its domestic law, to require [senior] [designated]²² 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.²³

Fifth Session: Vienna, 10-21 March 2003

Notes by the Secretariat

3. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein, including article 65.

Rolling text (A/AC.261/3/Rev.4)

“Article 65²⁴

“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:

“(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

²¹Some delegations were of the view that the concept in this paragraph should be moved to paragraph 1 (d) of article 11 (Private sector). Peru, as the author of the paragraph, indicated its intention to review it before the third reading of the draft text. One delegation indicated that the paragraph should not be so drafted as to imply that fictitious companies existed in all countries.

²²Some delegations thought that the word “senior” should be deleted, while some other delegations considered its retention essential. Some delegations were of the view that private sector officials should also be covered.

²³Some delegations indicated that they would have constitutional difficulties with this provision and, at the least, it would need to be made non-mandatory. Some delegations also felt that the provision would fit better in either article 6 (Public sector) or article 7 (Codes of conduct for public officials), while others were of the view that it should remain in chapter V.

²⁴During 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. In this context, paragraph 2 of article 68 was reformulated and moved to article 65, paragraph 2 (b) (see also under article 52 of the convention). A revised text for paragraphs 3 and 4 was prepared by 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.

“(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.²⁵

“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 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

²⁵The 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.

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.”

Sixth session: Vienna, 21 July-8 August 2003

Notes by the Secretariat

4. At the sixth session of the Ad Hoc Committee, Germany proposed that paragraphs 1, 3 and 4 of article 65 be amended to read as follows (see A/AC.261/L.207):

“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 to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are or have been entrusted with prominent public functions and their family members and close associates who are 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.

“3. In the context of subparagraph (a) of this article, States Parties shall implement measures to ensure that their financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should as a minimum contain information relating to the identity of the customer as well as of the beneficial owner.

“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 prevent, with the help of their regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group (shell banks). Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.”

5. At the sixth session of the Ad Hoc Committee, Canada proposed to amend article 65 of the draft convention to read as follows (see A/AC.261/L.221):

“Article 65

“Detection and prevention of transfers of illegally acquired assets

“Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers with high-value accounts and take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts, and to conduct enhanced scrutiny of 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 so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.”

Rolling text (A/AC.261/3/Rev.5)

“Article 65

“Prevention and detection of transfers of illicitly acquired assets

“1. Without prejudice to article [...] [Measures to prevent money-laundering] of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions²⁶ and their family members and close associates.²⁷ Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.²⁸

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

“(a) Issue advisories regarding the types of natural or legal person 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;²⁹ 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 natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

“3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate

²⁶It was agreed that the *travaux préparatoires* would indicate that paragraphs 1 and 2 should be read together and that the obligations imposed on financial institutions may be applied and implemented with due regard to particular risks of money-laundering. In this regard, States parties may guide financial institutions on appropriate procedures to apply and whether relevant risks require application and implementation of these provisions to accounts of a particular value or nature, to its own citizens as well as to citizens of other States and to officials with a particular function or seniority. The relevant initiatives of regional, interregional and multilateral organizations against money-laundering shall be those referred to in the note to article 14 in the *travaux préparatoires*.

²⁷It was agreed that the *travaux préparatoires* would indicate that the term “close associates” is deemed to encompass persons or companies clearly related to individuals entrusted with prominent public functions.

²⁸It was agreed that the *travaux préparatoires* would indicate that the words “discourage or prohibit financial institutions from doing business with any legitimate customer” are understood to include the notion of not endangering the ability of financial institutions to do business with legitimate customers.

²⁹It was agreed that the *travaux préparatoires* would indicate that the obligation to issue advisories may be fulfilled by the State party or by its financial oversight bodies.

records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.³⁰

“4. With the aim of preventing and detecting transfers of illicitly acquired assets derived from offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence³¹ and that are not affiliated with a regulated financial group.³² Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

“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. Each State Party shall also consider taking such measures as may be necessary to permit its competent 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 taking 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.”

Notes by the Secretariat

6. The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to recommend that the phrase “proceeds of offences established in accordance with this Convention”, which replaced the phrase “assets, including funds, of illicit origin derived from acts of corruption”, be used instead of the phrase “illicitly acquired assets” in paragraphs 4 and 5 of article 65 of the draft convention. The consistency group also decided to recommend that the title of article 65 be changed to read “Prevention and detection of transfers of proceeds of crime” (see A/AC.261/24 and Corr.1, para. 14).

7. At its sixth session, the Ad Hoc Committee provisionally approved article 65 of the draft convention (see A/AC.261/22, para. 22).

³⁰It was agreed that the *travaux préparatoires* would indicate that this paragraph is not intended to expand the scope of paragraphs 1 and 2 of this article.

³¹It was agreed that the *travaux préparatoires* would indicate that the term “physical presence” is understood to mean “meaningful mind and management” located within the jurisdiction. The simple existence of a local agent or low-level staff would not constitute physical presence. Management is understood to include administration, that is, books and records.

³²It was agreed that the *travaux préparatoires* would indicate that banks that have no physical presence and are not affiliated with a regulated financial group are generally known as “shell banks”.

8. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 52

Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

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

(a) Issue advisories regarding the types of natural or legal person 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 natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a

correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

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. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking 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.

C. Interpretative notes

The interpretative notes on article 52 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 49-55) are as follows:

Paragraph 1

(a) Paragraphs 1 and 2 should be read together and the obligations imposed on financial institutions may be applied and implemented with due regard to particular risks of money-laundering. In that regard, States parties may guide financial institutions on appropriate procedures to apply and whether relevant risks require application and implementation of these provisions to accounts of a particular value or nature, to its own citizens as well as to citizens of other States and to officials with a particular function or seniority. The relevant initiatives of regional, interregional and multilateral organizations against money-laundering shall be those referred to in the note to article 14 in the *travaux préparatoires*;

(b) The term “close associates” is deemed to encompass persons or companies clearly related to individuals entrusted with prominent public functions;

(c) The words “discourage or prohibit financial institutions from doing business with any legitimate customer” are understood to include the notion of not endangering the ability of financial institutions to do business with legitimate customers;

Paragraph 2

Subparagraph (a)

(d) The obligation to issue advisories may be fulfilled by the State party or by its financial oversight bodies;

Paragraph 3

(e) This paragraph is not intended to expand the scope of paragraphs 1 and 2 of this article;

Paragraph 4

(f) The term “physical presence” is understood to mean “meaningful mind and management” located within the jurisdiction. The simple existence of a local agent or low-level staff would not constitute physical presence. Management is understood to include administration, that is, books and records;

(g) Banks that have no physical presence and are not affiliated with a regulated financial group are generally known as “shell banks”.

Article 53. Measures for direct recovery of property

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “Recovery mechanisms” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

*“Article [...]”^{1, 2}
“Recovery mechanisms”*

“Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

“Access to courts”

“(a) Adopt such measures as may be necessary to permit another State Party to initiate legal action in its courts for ownership of illicitly acquired assets that are located in its territory, by presenting either:

“(i) Evidence to establish title to or ownership of the assets; or

¹ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

² Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

“(ii) A final judgement establishing title to or ownership of the assets issued by the competent authorities of another State Party, which order may be given effect in the territory of the requested State to the extent permitted by the law of that State Party;

“...”

Notes by the Secretariat

2. The draft text of the article on “Recovery mechanisms” appeared as article 67 in the rolling text of the draft convention contained in document A/AC.261/3/Rev.1/Add.1 with no further change.

3. During the first reading of the draft text, at the second session of the Ad Hoc Committee, China proposed a new formulation for article 67 (see A/AC.261/L.82). The text of that proposal was as follows (see also under article 54):

“Article 67 “Recovery mechanisms

“Each State Party shall, in accordance with its domestic laws and procedures, provide assistance to other States Parties in recovering illegally acquired assets. For that purpose, States Parties shall take measures as may be necessary to:

“(a) Enforce foreign adjudications on confiscation or monetary penalties

“Each State Party shall allow its competent authorities to enforce, on its territory, any valid judicial and administrative adjudication on confiscation or monetary penalties of another State Party;

“(b) Return the assets based on the evidence of title

“Where another State Party has provided documentary evidence of title to illegally acquired assets, a State Party shall, in the absence of any statutory grounds for refusal, recognize the proprietary right of that State Party to such assets and shall facilitate the return of such assets to their legal owner;

“(c) Permit the initiation of civil proceedings by another State Party or other interested party

“Each State Party shall adopt such measures as may be necessary to permit another State Party or a related party to initiate civil proceedings in its courts for ownership of illegally acquired assets located within its territory;

“When the requesting State Party or related party initiates civil proceedings and requests the preventive measures, the requested State Party should adopt measures as requested;

“(d) Confiscate assets based on its own legal procedures

“Each State Party shall adopt legal procedures within its own territory against the illegal transfer of proceeds of crime, money-laundering activities and other, similar, acts against its own legislation for the purpose of seizure and confiscation of related assets, as well as the return of the associated assets.”

Following the first reading of the draft text, India proposed a new formulation for this article; that proposal was to be made available to the Ad Hoc Committee for the

second reading of the draft text. It was submitted at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003) and was as follows (see A/AC.261/11):

*“Article 67
“Recovery mechanisms*

“Each State Party shall, in addition to making available to a requesting State Party all facilities of mutual legal assistance provided for in article [...] [Mutual legal assistance] of this Convention in respect of seizure, confiscation, recovery and restitution of illicitly acquired assets, take the necessary steps to empower its competent authorities, in accordance with the principles of its domestic law, to provide assistance to the requesting State Party in the recovery of illicitly acquired assets and, to that end, shall:

“(a) Permit the requesting State Party to initiate legal action in the courts of the requested State Party for the purpose of establishing the ownership of illicitly acquired assets located in the territory of the requested State Party, by presenting either:

“(i) Evidence of title to or ownership of the assets; or

“(ii) A final judgement establishing title to or ownership of the assets issued by a competent court of the requesting State Party, which judgement may be given effect in the territory of the requested State Party;

“(b) Permit its competent authorities to give effect to a final judgement of a competent court of the requesting State Party ordering the confiscation of illicitly acquired assets located in the territory of the requested State Party;

“(c) Permit the requesting State Party to initiate legal action in a competent court of the requested State Party with a view to confiscating illicitly acquired assets originating in the territory of the requesting State Party and located in the territory of the requested State Party, pursuant to an investigation or proceedings involving the said illicitly acquired assets;

“(d) Adopt such measures as may be necessary to enable it, at the request of the requesting State Party, promptly:

“(i) To seize, restrain or otherwise prevent any dealing in or transfer or disposal of assets in respect of which the requesting State Party has furnished reasonable evidence that the assets were illicitly acquired;

“(ii) To preserve such assets in anticipation of their confiscation under a judgement issued by a competent court of the requesting State Party;

“(iii) To restrain assets following an arrest or charge made in the territory of the requesting State Party on the grounds that the assets were illicitly acquired;

“(iv) To give effect to a restraining order issued by a competent court of the requesting State Party;

“(v) To restrain assets upon request, provided that the request is accompanied by documentation setting forth reasonable grounds for believing that the assets will become liable to confiscation by a competent court in the requesting State Party;

“(e) Adopt such measures as may be necessary to ensure the prompt return of illicitly acquired assets to the requesting State Party; and

“(f) Consider adopting other measures necessary to facilitate the prompt recovery of illicitly acquired assets and their restitution to the requesting State Party.”

4. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that there were many issues involved when the State was the plaintiff, such as questions of procedure, evidence and immunities.

5. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations referred to the “evidence to establish title to or ownership of the assets” (subparagraph (a) (i)) and proposed that the formulation of the subparagraph be amended to cover other rights, in addition to ownership, and to introduce the concept of allowing for legal action to commence on the basis of reasonable evidence leading to a presumption of title or ownership.

6. During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations were concerned that the clause “to the extent permitted by the law of that State Party” (subparagraph (a) (ii)) entailed the risk of obliging the State party to prove the validity of the judgement in the courts of the requested State party.

Fourth session: Vienna, 13-24 January 2003

Notes by the Secretariat

7. The text presented below is a revised version submitted by the United States, which coordinated an informal working group established by the Vice-Chairman with responsibility for chapter V of the draft convention after the second reading of the draft text at the fourth session of the Ad Hoc Committee. The new revised version of the draft text of article 67 was divided in two articles as follows: article 67 on the “Direct recovery of assets” and a new article 67 bis that would cover mechanisms for recovery of assets through international cooperation in confiscation (see also under article 54 of the convention).

Rolling text (A/AC.261/3/Rev.3)

“Article 67

“Direct recovery of assets

“Each State Party shall, in accordance with principles of its domestic law, allow other States Parties to participate in legal proceedings to recover [illicitly acquired assets] directly and, to that end, shall:

“(a) Adopt such measures as may be necessary to permit another State Party to initiate legal action in its courts for ownership of [illicitly acquired assets] that are located in its territory, by presenting either:

“(i) Evidence to establish title to or ownership of the assets; or

“(ii) A final [civil] judgement establishing title to or ownership of the assets issued by the competent authorities of another State Party, which order may be

given effect in the territory of the requested State to the extent permitted by the law of that State Party;

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

“(c) Adopt such measures as may be necessary to authorize its courts in confiscation proceedings to adjudicate and recognize another State Party’s claim as a legitimate owner of [illicitly acquired assets] prior to ordering confiscation of such property; and

“(d) Adopt such other measures as it may deem necessary to facilitate the recovery of [illicitly acquired assets].”

Notes by the Secretariat

8. At the fourth session of the Ad Hoc Committee and with regard to subparagraph (d) of article 67 of the draft convention, Pakistan proposed a separate article to deal with “provisional measures”, to read as follows (see A/AC.261/11):

“1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to enable it, at the request of another State Party:

“(a) Promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property where there are reasonable grounds for believing that it will be subject to recovery as illicitly acquired assets;

“(b) To recognize and give effect to a restraining order issued by a court of competent jurisdiction in the requesting State.

“2. Whether or not a request has been made, a State Party may take measures enabling it to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property on the basis of a formal investigation, foreign arrest or charges related to the illicit acquisition of the property.

“3. The measures referred to in paragraphs 1 and 2 of this article would be taken in respect of the property irrespective of the name in which it is held.”

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

9. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein.

Rolling text (A/AC.261/3/Rev.4)*“Article 67³**“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 Party⁴ 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 Party⁵ that has been harmed by such offences;⁶

“(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 claim⁷ 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].”⁸

Sixth session: Vienna, 21 July-8 August 2003*Notes by the Secretariat*

10. During the sixth session of the Ad Hoc Committee, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention considered, pursuant to a request made by the Ad Hoc Committee, the question of whether the phrase “conduct criminalized in accordance with this Convention” in article 67 should be replaced with the phrase “an offence established in accordance with this Convention” in order to make the text consistent with that of the other articles. Having reached the conclusion that it was only a question of terminology, the consistency group decided that the phrase should be changed to read “the commission of an offence established in accordance with this Convention” in article 67 (see A/AC.261/24 and Corr.1, para. 9).

³ During the informal consultations, a revised text of article 67 was prepared by the delegation of the United States, in consultation with other delegations, pursuant to a request by the Chairman.

⁴ The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat jointly proposed that the words “or public international organization” be inserted in subparagraph (a) after the words “State Party” (see A/AC.261/L.212, annex).

⁵ The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat jointly proposed that the words “or public international organization” be inserted in subparagraph (b) after the words “State Party” (see A/AC.261/L.212, annex).

⁶ During the informal consultations, one delegation expressed concern about the content of this subparagraph.

⁷ The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat jointly proposed that the words “or a claim of a public international organization” be inserted after the words “State Party’s claim” in subparagraph (c) (see A/AC.261/L.212, annex).

⁸ Several delegations expressed a preference for the deletion of this subparagraph. Several other delegations were of the view that it should be retained.

Rolling text (A/AC.261/3/Rev.5)*“Article 67**“Measures for the direct recovery of property”⁹*

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

“(a) Take 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 the commission of an offence established in accordance with this Convention;

“(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

“(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.¹⁰

“[Subparagraph (d) was deleted.]”

Notes by the Secretariat

11. At its sixth session, the Ad Hoc Committee provisionally approved article 67 of the draft convention (see A/AC.261/22, para. 22).

12. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁹The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to recommend that the title of article 67 be changed to read “Measures for direct recovery of assets”, in order to make it consistent with the title of chapter V and the titles of other articles in that chapter (see A/AC.261/24 and Corr.1, para. 15).

¹⁰See also the proposal of France contained in document A/AC.261/L.223, according to which subparagraph (c) would read as follows:

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

It was agreed that the *travaux préparatoires* would indicate that, during the consideration of this paragraph, the representative of the Office of Legal Affairs of the Secretariat drew the attention of the Ad Hoc Committee to the proposal submitted by the representatives of the Secretary-General (see A/AC.261/L.212) to include in this paragraph a reference to the recognition of the claim of a public international organization in addition to the recognition of the claim of another State party. Following discussion of the proposal, the Ad Hoc Committee decided not to include such a reference, based upon the understanding that States parties could, in practice, recognize the claim of a public international organization of which they were members as the legitimate owner of property acquired through conduct established as an offence in accordance with the convention.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 53

Measures for direct recovery of property

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

(a) Take 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 the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

C. Interpretative notes

The interpretative note on article 53 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 56) is as follows:

Subparagraph (c)

During the consideration of this paragraph, the representative of the Office of Legal Affairs of the Secretariat drew the attention of the Ad Hoc Committee to the proposal submitted by his Office, together with the Office of Internal Oversight Services and the United Nations Office on Drugs and Crime (see A/AC.261/L.212), to include in this paragraph a reference to the recognition of the claim of a public international organization in addition to the recognition of the claim of another State party. Following discussion of the proposal, the Ad Hoc Committee decided not to include such a reference, based upon the understanding that States parties could, in practice, recognize the claim of a public international organization of which they were members as the legitimate owner of property acquired through conduct established as an offence in accordance with the convention.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “Recovery mechanisms” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

*“Article [...]”^{1, 2}
“Recovery mechanisms”*

“Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

“... ”

“Enforcement of foreign confiscation judgements”

“(b) 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

¹ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

² Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

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

“Confiscation based on a foreign offence

“(c) Adopt such measures as may be necessary to enable it to prosecute and punish the laundering of illicitly acquired assets of foreign origin and to confiscate assets pursuant to investigations or proceedings involving illicitly acquired assets of such origin;

“Provisional measures

“(d) Adopt such measures as may be necessary, in accordance with principles of its domestic law, to enable it, at the request of another State Party, promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property for which there is a reasonable basis to believe that it will be subject to recovery as illicitly acquired assets. In addition to mechanisms to preserve property in anticipation of a domestic confiscation action, such measures shall include authority to restrain assets based upon a foreign arrest or charge related to their illicit acquisition, authority to give effect to a restraining order issued by a court of competent jurisdiction in the requesting State and authority to restrain assets upon a request setting forth a reasonable basis to believe that the property will be named in a confiscation judgement in the requesting State;

“...”

Notes by the Secretariat

2. The draft text of the article on “Recovery mechanisms” appeared as article 67 in the rolling text of the draft convention (A/AC.261/3/Rev.1/Add.1) with no further change.

3. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), China proposed a new formulation for this article (see A/AC.261/L.82). The text of that proposal was as follows (see also under article 53):

“Article 67

“Recovery mechanisms

“Each State Party shall, in accordance with its domestic laws and procedures, provide assistance to other States Parties in recovering illegally acquired assets. For that purpose, States Parties shall take measures as may be necessary to:

“(a) Enforce foreign adjudications on confiscation or monetary penalties

“Each State Party shall allow its competent authorities to enforce, on its territory, any valid judicial and administrative adjudication on confiscation or monetary penalties of another State Party;

“(b) Return the assets based on the evidence of title

“Where another State Party has provided documentary evidence of title to illegally acquired assets, a State Party shall, in the absence of any statutory grounds

for refusal, recognize the proprietary right of that State Party to such assets and shall facilitate the return of such assets to their legal owner;

“(c) Permit the initiation of civil proceedings by another State Party or other interested party

“Each State Party shall adopt such measures as may be necessary to permit another State Party or a related party to initiate civil proceedings in its courts for ownership of illegally acquired assets located within its territory;

“When the requesting State Party or related party initiates civil proceedings and requests the preventive measures, the requested State Party should adopt measures as requested;

“(d) Confiscate assets based on its own legal procedures

“Each State Party shall adopt legal procedures within its own territory against the illegal transfer of proceeds of crime, money-laundering activities and other, similar, acts against its own legislation for the purpose of seizure and confiscation of related assets, as well as the return of the associated assets.”

Following the first reading of the draft text, India proposed a new formulation for this article; that proposal was to be made available to the Ad Hoc Committee for the second reading of the draft text.

4. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the formulation of subparagraph (b) (on enforcement of foreign confiscation judgements) was not clear. Those delegations would face problems if the proceedings referred to in this article included civil forfeiture. Related to that matter was the lack of clarity as to whether the foreign judgement involved would be a criminal, civil or administrative one. Further, those delegations pointed out that the concept of payment introduced the notion of damages, which should be clearly defined.

5. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations were of the view that subparagraph (c) (on confiscation based on a foreign offence) overlapped with article 61 (Disposal of confiscated proceeds of crime or property) of the draft convention. Some delegations also considered that there was no need to limit this subparagraph to the offence of money-laundering and it should be expanded to the predicate corruption offences.

6. During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations highlighted the importance of subparagraph (d) (provisional measures) and suggested that it might more appropriately stand alone as a separate article, broken down into several paragraphs for the purpose of clarity. After the first reading of the draft text, Pakistan submitted a proposal along these lines that would be made available to the Ad Hoc Committee for the second reading of the draft text. Some delegations were of the view that this subparagraph overlapped with article 53 (Mutual legal assistance). Most delegations were of the view that the subparagraph introduced measures that would function as complementary to mutual legal assistance, as envisaged in article 53, but agreed that the two provisions should be brought into line with each other in order to avoid problems in their interpretation that could diminish their effectiveness.

Fourth session: Vienna, 13-24 January 2003*Notes by the Secretariat*

7. The text presented below is a revised version submitted by the United States, which coordinated an informal working group established by the Vice-Chairman with responsibility for chapter V of the draft convention after the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The new revised version of the draft text of article 67 was divided in two articles as follows: article 67 (Direct recovery of assets) (see also under article 53 of the convention) and a new article 67 bis, which would cover mechanisms for recovery of assets through international cooperation in confiscation.

Rolling text (A/AC.261/3/Rev.3)

*“Article 67 bis
“Mechanisms for recovery of assets through
international cooperation in confiscation*

“For the purposes of recovering criminal proceeds and enabling mutual legal assistance in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention:

“(a) Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of [illicitly acquired assets] and, to that end, shall:

“(i) 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 confiscation of [illicitly acquired assets] or the payment of a sum of money corresponding to such assets;

“(ii) Adopt such measures as may be necessary to enable its competent authorities to order the confiscation of [illicitly acquired assets] of foreign origin or the payment of a sum of money corresponding to such assets, including [illicitly acquired assets] involved in money-laundering offences;

“(iii) Consider adopting such measures as may be necessary to allow confiscation of property representing [illicitly acquired assets] 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;

“(b) Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to enable it, at the request of another State Party, promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of assets for which there is a reasonable basis to believe that such assets will be subject to recovery as [illicitly acquired assets] and, to that end, shall:

“(i) Adopt such measures as may be necessary to preserve properly in anticipation of a confiscation action it may bring as the requested State;

“(ii) Adopt such measures as may be necessary to restrain or seize assets based upon a foreign arrest or criminal charge related to the acquisition of such assets;

“(iii) Adopt such measures as may be necessary to give effect to a restraining or seizure order issued by a court of competent jurisdiction of another State Party;

“(iv) Adopt such measures as may be necessary to restrain or seize assets upon a request setting forth a reasonable basis to believe that the property will be named in a confiscation judgment in the requesting State; and

“(v) Adopt such additional measures as it may deem appropriate to preserve property for confiscation.”

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

8. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein.

Rolling text (A/AC.261/3/Rev.4)

“Article 67 bis³

“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 judgment of another State Party ordering the 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.

³ 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 (Japan and Singapore), pursuant to a request by the Chairman. The revised text of paragraph 2 was contained in document A/AC.261/L.244.

“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.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 67 bis

“Mechanisms for recovery of property 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 an offence established in accordance with this Convention, shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;⁴

“(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law;⁵ and

“(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender⁶ cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

⁴ It was agreed that the *travaux préparatoires* would indicate that the reference to an order of confiscation in paragraph 1 (a) of this article may be interpreted broadly, as including monetary confiscation judgements, but should not be read as requiring enforcement of an order issued by a court that does not have criminal jurisdiction.

⁵ It was agreed that the *travaux préparatoires* would indicate that paragraph 1 (b) of this article shall be interpreted as meaning that the obligation contained in this provision would be fulfilled by a criminal proceeding that could lead to confiscation orders.

⁶ It was agreed that the *travaux préparatoires* would indicate that in the context of this subparagraph the term “offender” might in appropriate cases be understood to include persons who may be title holders for the purpose of concealing the identity of the true owners of the property in question.

“2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article [...] [International cooperation for purposes of confiscation] of this Convention, shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds⁷ for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;⁸

“(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

“(c) Consider taking 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 property.”

Notes by the Secretariat

9. During the sixth session of the Ad Hoc Committee, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention considered, pursuant to a request made by the Ad Hoc Committee, the question of whether the phrase “conduct criminalized in accordance with this Convention” in article 67 bis, paragraph 1, of the draft convention (see A/AC.261/3/Rev.4) should be replaced with the phrase “an offence established in accordance with this Convention” in order to make the text consistent with that of the other articles. Having reached the conclusion that it was only a question of terminology, the consistency group decided that the phrase should be changed to read “the commission of an offence established in accordance with this Convention” in article 67 (see A/AC.261/24 and Corr.1, para. 9).

10. At its sixth session, the Ad Hoc Committee provisionally approved article 67 bis of the draft convention (see A/AC.261/22, para. 22).

11. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

⁷ It was agreed that the *travaux préparatoires* would indicate that the term “sufficient grounds” used in paragraph 2 (a) of this article should be construed as a reference to a prima facie case in countries whose legal systems employ that term.

⁸ It was agreed that the *travaux préparatoires* would indicate in relation to paragraph 2 (a) that a State party may choose to establish procedures either for recognizing and enforcing a foreign freezing or seizure order or for using a foreign freezing or seizure order as the basis for seeking the issuance of its own freezing or seizure order. Reference to a freezing or seizure order in subparagraph (a) should not be construed as requiring enforcement or recognition of a freezing or seizure order issued by an authority that does not have criminal jurisdiction.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 54

*Mechanisms for recovery of property through international
cooperation in confiscation*

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking 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 property.

C. Interpretative notes

The interpretative notes on article 54 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 57-61) are as follows:

Paragraph 1

Subparagraph (a)

(a) The reference to an order of confiscation in paragraph 1 (a) of this article may be interpreted broadly, as including monetary confiscation judgements, but should not be read as requiring enforcement of an order issued by a court that does not have criminal jurisdiction;

Subparagraph (b)

(b) Paragraph 1 (b) of this article shall be interpreted as meaning that the obligation contained in this provision would be fulfilled by a criminal proceeding that could lead to confiscation orders;

Subparagraph (c)

(c) In the context of paragraph 1 (c) of this article, the term “offender” may in appropriate cases be understood to include persons who may be title holders for the purpose of concealing the identity of the true owners of the property in question;

Paragraph 2

Subparagraph (a)

(d) The term “sufficient grounds” used in paragraph 2 (a) of this article should be construed as a reference to a prima facie case in countries whose legal systems employ that term;

(e) Regarding paragraph 2 (a) of this article, a State party may choose to establish procedures either for recognizing and enforcing a foreign freezing or seizure order or for using a foreign freezing or seizure order as the basis for seeking the issuance of its own freezing or seizure order. Reference to a freezing or seizure order in paragraph 2 (a) of this article should not be construed as requiring enforcement or recognition of a freezing or seizure order issued by an authority that does not have criminal jurisdiction.

Article 55. International cooperation for purposes of confiscation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. Article 60 (International cooperation for purposes of confiscation) was included in the first part of the rolling text, which contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The other articles presented below due to their relevance to article 60 were included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article 60

“International cooperation for purposes of confiscation¹

“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 [...] [Confiscation and seizure], 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

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) and based on article 13 of the Organized Crime Convention. Austria and the Netherlands suggested that the contents of the article should offer the first elements for a solution to the problem of international cooperation in the case of transfer of embezzled public funds to a foreign country. Consideration could usefully be given to additional elements, which would, for example, accelerate procedures (priority treatment or direct contact between enforcement authorities; establishment of a clearing house; and inclusion of “abuse of power by members of the Government” as an additional offence). Colombia had proposed that this chapter contain two articles, entitled, respectively, “Prevention and combating of the transfer of funds of illicit origin derived from acts of corruption” and “Repatriation of funds derived from acts of corruption”, but had not proposed a specific text (A/AC.261/IPM/14).

“(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 article [...] [Confiscation and seizure], paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, situated in the territory of the requested State Party.

“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 [...] [Confiscation and seizure], 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.

“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 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;

“(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;

“(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.

“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 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 conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

“7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

“8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

“9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

“Article [...]”^{2, 3}

“*Special cooperation provisions*

“... ”

“*Confiscation and other measures*

“3. Following a request made pursuant to this chapter, a State Party in which illicitly acquired assets are situated shall:

“(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation consistent with article [...] [Recovery mechanisms], paragraph 3, of this Convention and, if such 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 the requesting State consistent with article [...] [Recovery mechanisms], paragraph 2, of this Convention; or

“(c) Submit a request for provisional measures to its competent authorities consistent with article [...] [Recovery mechanisms], paragraph 4, of this Convention; or

“(d) Take such other measures as may be permissible under its domestic law to effect the recovery of such assets.

“... ”

“Article [...]”

“*Contents of a request*

“The provisions of chapter IV [International cooperation] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in chapter IV, requests made pursuant to this article shall contain sufficient evidence and information to support the underlying allegation, including the following:

“(a) A complete description of the actions requested and of the assets to be restrained, seized or confiscated, including the location and value of the property;

“(b) A statement identifying the legal and natural persons whom the requesting State believes to be victims, whether public or private;

“(c) A detailed statement of facts sufficient to enable the requested State to seek appropriate orders under its domestic law, including a full description of the illegal activity and its relationship to the assets to be seized, restrained or confiscated;

² Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

³ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

“(d) In the case of a request pertaining to the enforcement of a foreign judgement or restraining order pursuant to article [...] [Recovery mechanisms], subparagraph (b), of this Convention, a legally admissible copy of an order of the requesting State upon which the request is based, information as to the extent to which execution of the order is requested, a statement specifying the measures taken to provide adequate notification to third parties and to ensure due process and, if involving an order of confiscation, an attestation by the competent authority of the requesting State that the confiscation order is final, enforceable and not subject to ordinary means of appeal; and

“(e) Such additional information as the requested State may require.

“Article [...]

“Option 1²

“Limitations on cooperation

“1. The execution of measures pursuant to this chapter shall be in conformity with principles of due process and shall not prejudice the rights of bona fide third parties.

“2. The execution of any cooperation measure under this chapter may be refused or provisional measures lifted if:

“(a) The request is not made in conformity with the provisions of this chapter;

“(b) The requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

“(c) The requested State does not receive sufficient or timely evidence regarding the underlying offences; or

“(d) The illicit acts constitute minor offences or the illicitly acquired assets are of a *de minimis* value.

“3. Before lifting any provisional measure taken pursuant to this chapter, the requested State shall, wherever possible, give the requesting State an opportunity to present its reasons in favour of continuing the measure.

“Option 2³

“States Parties shall not be entitled to refuse to cooperate with one another and shall accordingly afford mutual assistance with a view to expediting and providing guarantees in respect of proceedings initiated for the purpose of bringing about the return of assets, including funds, of illicit origin derived from acts of corruption to their countries of origin after being transferred. States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.

*“Article [...]”
“Additional provisions”*

“1. If a State Party elects to make the taking of the measures referred to in this chapter conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

“... ”

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

“... ”

Notes by the Secretariat

2. The draft text of the provisions presented above was incorporated into the rolling text of the draft convention contained in document A/AC.261/3/Rev.1/Add.1 with no further change. The numbering of the relevant articles in that rolling text was as follows:

- Article 60. International cooperation for purposes of confiscation
- Article 68. Special cooperation provisions
- Article 69. Contents of a request
- Article 70. Limitations on cooperation
- Article 72. Additional provisions

3. During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations expressed the wish to retain article 60, but pointed to the need to review it in conjunction with other pertinent articles of chapter V. Some delegations considered that article 60 could be moved to the chapter on international cooperation.

4. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that the measures to be undertaken by the requested State party should apply not only to proceeds and instrumentalities, but to the entire estate of the alleged offender, as a guarantee that any subsequent judgement, including the imposition of sanctions such as fines, would be executed.

5. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed the addition of the following sentence at the end of paragraph 2 of article 60: “The requested State Party shall inform the requesting State Party of the due diligence undertaken in handling the request for confiscation throughout the duration of the procedure.”

6. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations referred to paragraph 6 of article 60 and the consideration of the convention as a “necessary and sufficient treaty basis” for taking the measures

referred to in paragraphs 1 and 2 of article 60 and raised concerns about the employment of the term “sufficient”, which might introduce an element of vagueness. Other delegations pointed out that the origin of the text was the Organized Crime Convention and that the employment of the same term there had not caused any conceptual problems.

7. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations considered that the wording of paragraph 9 of article 60 was unnecessarily obligatory. Many other delegations pointed out that the text came from the Organized Crime Convention and the obligation envisaged by the paragraph was to “consider”.

8. During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations pointed out that there was significant overlap of most of article 68 with other articles of the draft convention, such as articles 60 and 67, on recovery mechanisms.

9. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed to amend paragraph 3 (a) of article 68 to read as follows: “Envisage measures allowing the requesting State to start at the level of competent jurisdiction and authorities of the requested State the procedure of confiscation [consistent with] ...”.

10. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Pakistan referred to paragraph 3 (c) of article 68 and proposed the insertion of the word “expeditiously” after the word “measures” and to add the following sentence at the end of the subparagraph: “with a view to ensuring immediate action to prevent any transfer, disposal and so forth of the assets in question.”

11. During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was noted that article 69 overlapped with a number of other provisions, including with article 60. That duplication should be taken into consideration at the second reading of the draft text.

12. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Pakistan referred to subparagraph (a) of article 69 and proposed the following alternative formulation: “A complete description of assets, properties and funds sufficient to identify them and wherever possible an indication of their location and estimated value, for the purpose of seizure, restraint and confiscation.”

13. After the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman asked Peru and the United States to make an effort to reformulate article 70, drawing inspiration from article 18 of the Organized Crime Convention. The Chairman also reiterated the provisional nature of discussions during the first reading of the draft text.

14. During the first reading of the draft text, at the second session of the Ad Hoc Committee, a number of delegations expressed their preference for option 1 of article 70. Those delegations pointed out that asset recovery was an issue of international cooperation, to which basic grounds of refusal would apply. Further, it was important for those delegations to ensure the protection of bona fide third parties and that there would be some time limit for the pursuit of cooperation requests.

15. During the first reading of the draft text, at the second session of the Ad Hoc Committee, a number of delegations expressed their preference for option 2 of article 70. Those delegations pointed out that the formulation of option 1 and the many vague terms used therein created obstacles to cooperation and entailed the risk of diminishing the effectiveness of the other articles of this chapter. According to those delegations, refusal to cooperate should be an exception.

16. During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that the provisions of article 72 had been included in the original proposal in order to make it complete, but they overlapped with other provisions of the draft convention. Consequently, there was agreement that the provisions of the article should be merged with other provisions covering the same issues.

Fourth session: Vienna, 13-24 January 2003

Russian Federation (A/AC.261/11)

“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 [...] [Confiscation and seizure], paragraph 1, of this Convention situated in its territory or for confiscation of other property referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention that is situated in its territory and that, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by this Convention 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 article [...] [Confiscation and seizure], paragraph 1, of this Convention.

“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 [...] [Confiscation and seizure], paragraph 1, of this Convention or other property referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention that is situated in its territory and that, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by 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.”

Rolling text (A/AC.261/3/Rev.3)*“Article 60⁴**“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 instrumentalities⁵ referred to in article [...] [Confiscation and seizure], 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 [...] [Recovery mechanisms], paragraph (b), and] [...] [Confiscation and seizure], paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], 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.]⁶

“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 [...] [Confiscation and seizure], 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.⁷

“3. The provisions of articles [...] [Mutual legal assistance] [and [...] [Bank secrecy]]⁸ 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 value of the property]⁹ and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the

⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, there was agreement to maintain this article in chapter V and to retain its current formulation, for consideration at the third reading. The current draft text of this article incorporated elements from articles 68-70 and 72.

⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations expressed the view that the term “illicitly acquired assets” should be used here for the sake of consistency with the rest of this chapter. Other delegations pointed out that this article was designed to deal with all proceeds of crime more broadly.

⁶ Formerly paragraph 3 (d) of article 68.

⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Algeria proposed the addition of the following sentence at the end of this paragraph: “The requested State Party shall inform the requesting State Party of the due diligence undertaken in handling the request for freezing, seizure and confiscation throughout the duration of the procedure.”

⁸ Taken from article 70.

⁹ Taken from article 69.

order under its domestic law [, including a description of the illegal activity and its relationship to the assets to be confiscated];⁹

“(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 third parties and to ensure due process and a statement that the confiscation order is final, enforceable [and not subject to ordinary means of appeal]];⁹

“(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. [In addition:

“(i) If enforcement of a restraining or seizure order is sought, a legally admissible copy of such order, information as to the extent to which execution of the order is requested and a statement specifying the measures that have been or will be taken to provide adequate notification to third parties and to ensure due process; and

“(ii) If restraint is sought based upon a foreign arrest or charge, a legally admissible copy of such order;]⁹

“[(d)In the case of a request pertaining to this article, a statement identifying, to the extent known, the legal and natural persons whom the requesting State Party believes to be victims, whether public or private.]⁹

“[4. 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.]⁸

“5. 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.

“6. Each State Party shall furnish copies of its laws and regulations that give effect to [this article] [this chapter]¹⁰ and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.¹¹

“7. If a State Party elects to make the taking of the measures referred to in [paragraphs 1 and 2 of this article] [this chapter]¹⁰ conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

“8. Cooperation under this article may be refused [or provisional measures lifted]⁸ by a State Party if the offence to which the request relates is not an offence covered by this Convention [, the requested State Party does not receive sufficient

¹⁰Taken from article 72.

¹¹During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed to move this paragraph to the implementation provisions in the final chapter of the draft convention.

or timely evidence regarding the underlying offences or the illicit acts constitute minor offences or the illicitly acquired assets are of a *de minimis* value.]^{8, 12}

“[9. 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.]⁸

“10. The provisions of this article shall [be in conformity with principles of due process and shall]⁸ not be construed to prejudice the rights of bona fide third parties.

“11. 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].”¹⁰

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

17. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein.

Rolling text (A/AC.261/3/Rev.4)

“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;

¹²During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation proposed to replace the words “covered by this Convention” with the words “established by the States Parties in accordance with this Convention”. Other delegations were not in favour of that proposal.

“[(c) Take such other measures as may be permissible under its domestic law to effect the recovery of such assets.]¹³

“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.^{14, 15}

“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 property¹⁶ 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];¹⁷

“(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.¹⁸

“[Subparagraph (d) was deleted.]¹⁹

“[Paragraph 4 was moved.]²⁰

¹³During the informal consultations, 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.

¹⁴During the informal consultations, 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.”

¹⁵During the informal consultations, the United States proposed to replace paragraph 2 of this article with the following text (now subparagraph 2 of article 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.”

¹⁶Taken from article 69.

¹⁷Ibid. 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.

¹⁸During 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.

¹⁹During the informal consultations, subparagraph (d) was withdrawn by the United States.

²⁰During 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 was as follows: “States Parties shall execute requests for assistance in the recovery

“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]²¹ 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]²¹ 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.²²

“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].”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“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 instrumentalities²³ referred to in article [...] [Freezing, seizure and confiscation], paragraph 1, of this Convention

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.

²¹ Taken from article 72.

²² During the informal consultations, a revised text of this paragraph (previously paragraph 9) was prepared by the United States in consultation with Austria and France, at the request of the Chairman.

²³ It was agreed that the *travaux préparatoires* would indicate that the term “instrumentalities” should not be interpreted in an overly broad manner.

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 1 (a), 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.

“[Subparagraph (c) was deleted.]

“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.

“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, where relevant, the estimated value of the property 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;²⁴

“(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 available, a legally admissible copy of an order on which the request is based.

“[Subparagraph (d) was deleted.]

“[Paragraph 4 was moved.]

²⁴It was agreed that the *travaux préparatoires* would indicate that the statement of facts may include a description of the illicit activity and its relationship to the assets to be confiscated.

“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 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 conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

“7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.²⁵

“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 not be construed as prejudicing the rights of bona fide third parties.²⁶

“[Paragraph 10 became article 60 bis.]”

Notes by the Secretariat

18. Concerning the question of choosing between the phrases “offences covered by this Convention” and “offences established in accordance with this Convention”, the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to consider, on a case-by-case basis, whether the choice was a substantive matter or a matter pertaining to consistency. The consistency group then decided to recommend replacing the phrase “offences covered by this Convention” with the phrase “offences established in accordance with this Convention” in article 60, paragraphs 1 and 2, of the draft convention (see A/AC.261/24 and Corr.1, para. 12).

19. At its sixth session, the Ad Hoc Committee provisionally approved article 60 of the draft convention (see A/AC.261/22, para. 22).

20. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was

²⁵It was agreed that the *travaux préparatoires* would reflect the understanding that the requested State party will consult with the requesting State party on whether the property is of *de minimis* value or on ways and means of respecting any deadline for the provision of additional evidence.

²⁶It was agreed that the *travaux préparatoires* would indicate that references in this article to article 42, paragraph 1, should be understood to include reference to article 42, paragraphs 5-7, of the draft convention.

submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 55

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, 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 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with 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 31, 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.

3. The provisions of article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, 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, where relevant, the estimated value of the property 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;

(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 available, a legally admissible copy of an order on which the request is based.

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 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 conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

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 not be construed as prejudicing the rights of bona fide third parties.

C. Interpretative notes

The interpretative notes on article 55 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 62-65) are as follows:

(a) References in this article to article 31, paragraph 1, should be understood to include reference to article 31, paragraphs 5-7;

Paragraph 1

(b) The term “instrumentalities” should not be interpreted in an overly broad manner;

Paragraph 3

Subparagraph (a)

(c) The statement of facts may include a description of the illicit activity and its relationship to the assets to be confiscated;

Paragraph 7

(d) The requested State Party will consult with the requesting State Party on whether the property is of *de minimis* value or on ways and means of respecting any deadline for the provision of additional evidence.

Article 56. Special cooperation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “Special cooperation provisions” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article [...]”¹

“Special cooperation provisions

“1. In addition to the provisions established in chapter IV [International cooperation] of this Convention, States Parties shall afford one another the widest measure of assistance in the recovery of illicitly acquired assets in accordance with their domestic laws and, as may be appropriate, through the exercise of authority pursuant to this article.

“2. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences, with a view to facilitating the recovery of assets, including funds, of illicit origin derived from acts of corruption.²

“ ...

¹ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

² Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

“Requests for application of enhanced scrutiny

“4. Upon an appropriate request from another State Party, a requested State shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Prevention], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.

“Spontaneous information-sharing

“5. 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.”

Notes by the Secretariat

2. The draft text of the article on “Special cooperation provisions” appeared as article 68 in the rolling text of the draft convention contained in document A/AC.261/3/Rev.1/Add.1 with no further substantial change.

3. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), many delegations pointed out that there was significant overlap between most of this article and other articles of the draft convention, such as articles 60 (International cooperation for purposes of confiscation) and 67 (Recovery mechanisms).

Fourth session: Vienna, 13-24 January 2003***Rolling text (A/AC.261/3/Rev.3)****“Article 68**“[Special cooperation provisions]*

“1. States Parties shall cooperate with one another for the purpose of expediting the process of [recognition or] execution of judicial sentences, as appropriate, establishing criminal and civil liability in cases of offences covered by this Convention, in accordance with their domestic law, with a view to facilitating the recovery of illicitly acquired assets.³

“2. Upon an appropriate⁴ request from another State Party, a requested State [Party] shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those

³ Revised text submitted by Peru following the second reading of the draft text, at the fourth session of the Ad Hoc Committee, at the request of the Vice-Chairman with responsibility for this chapter of the draft convention. Some delegations proposed the deletion of this paragraph.

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations proposed the deletion of the word “appropriate”.

institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Detection [and prevention] of transfers of illicitly acquired assets], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.^{5, 6}

“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.”⁷

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

4. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein.

Rolling text (A/AC.261/3/Rev.4)

“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, 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) (see under article 52 of the convention).]

“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.”⁸

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations reiterated the comments they had made during the discussion of article 65 about the use of the adjective “senior”. This point was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

⁶ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations proposed that this paragraph be moved to article 67 (Direct recovery of property).

⁷ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, many delegations proposed the deletion of this paragraph, expressing their preference for paragraph 4 of article 53 (Mutual legal assistance) as the most appropriate language to deal with this issue.

⁸ 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”.

“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.”⁹

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 68

“Special cooperation

“[Paragraph 1 was deleted.]

“Without prejudice to its domestic law, each State Party shall endeavour to take 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 State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

“[Paragraph 4 was deleted.]”

Notes by the Secretariat

5. The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention decided to recommend that the phrase “proceeds of offences established in accordance with this Convention”, which replaced the phrase “assets, including funds, of illicit origin derived from acts of corruption”, be used instead of the phrase “illicitly acquired assets” in article 68 of the draft convention (see A/AC.261/24 and Corr.1, para. 14). In addition, the word “provision” was removed from the title of article 68 to avoid redundancy, so that the title would read “Special cooperation” (see A/AC.261/24 and Corr.1, para. 11).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved article 68 (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁹The text of this paragraph is based on former subparagraph 1 (b) of article 64 (Specific provisions). During the informal consultations, it was recommended to move it to this location.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 56
Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57. Return and disposal of assets

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. Articles 61 (Disposal of confiscated proceeds of crime or property) and 62 (Return of property to the country of origin in cases of damage to state property) were included in the first part of the rolling text, which contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The other articles presented below due to their relevance to articles 61 and 62 were included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article 61

“Option 1¹

“Disposal of confiscated proceeds of crime or property

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

“2. When acting on the request made by another State Party in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) and based on article 14 of the Organized Crime Convention, with a slight change to paragraph 2 in order to include embezzled public funds.

crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds of crime or property to their legitimate owners or, in the case of embezzled public funds, return it to the relevant public funds.

“3. When acting on the request made by another State Party in accordance with article [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation] of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

“(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

“(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

“Option 2²

“Disposal of confiscated proceeds of crime or property and the return of such proceeds to their countries of origin or to countries or persons authorized to receive them

“1. Proceeds of crime or property confiscated by a State Party pursuant to articles [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

“2. 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 legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

“3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

“4. When acting on the request made by another State Party in accordance with articles [...] [Confiscation and seizure] and [...] [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

“Article 62²

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

“1. Notwithstanding the provisions of articles [...] [Confiscation and seizure], [...] [International cooperation for the purposes of confiscation] and [...] [Disposal of confiscated proceeds] 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.

“Article [...]

“Recovery mechanisms

“Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

“...

“Restitution

“(e) Consider adopting such measures as may be necessary to provide for restitution of illicitly acquired assets to the requesting State or to other victims of crimes; and

“Other measures

“(f) Consider adopting such other measures as may be necessary to facilitate the recovery of illicitly acquired assets.

“Article [...]”³

“Disposition of assets

“1. Illicitly acquired assets recovered pursuant to this chapter shall be disposed of in accordance with domestic law. When acting on the request of another State Party under this chapter, States Parties shall, to the extent permitted by domestic law:

“(a) Give priority consideration to transferring the recovered assets in such a manner as to compensate the victims of the crime or to return the assets to their legitimate owners;

“(b) Where appropriate, consider requiring that all or a portion of the recovered assets be used to support anti-corruption initiatives and programmes;

³ Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

“(c) Where appropriate, consider sharing confiscated assets with foreign authorities that assisted in the investigation, prosecution or judicial proceeding leading to the confiscation;

“(d) Where appropriate, the requested State may deduct reasonable expenses incurred in the investigation, prosecution or judicial proceeding leading to the recovery of illicitly acquired assets prior to transferring or sharing such recovered assets pursuant to this chapter.

“2. Each State Party shall adopt such measures as may be necessary to establish, consistent with principles of its domestic law:

“(a) A mechanism for the consideration of claims by another State Party against illicitly acquired assets involved in a confiscation proceeding; and

“(b) Authority to share confiscated assets with foreign authorities in recognition of assistance provided that leads to confiscation.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 61^{4, 5}

“Option 1⁶

“Disposal of confiscated proceeds of crime or property

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

“2. When acting on the request made by another State Party in accordance with article [...] [International cooperation for purposes of confiscation] of this

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed a new formulation for this article (see A/AC.261/L.80) as follows:

“Article 61

“Disposal of confiscated proceeds of crime or property

“1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] of this Convention shall be disposed of by that State Party in accordance with the provisions of this Convention.

“2. When acting on the request made by another State Party in accordance with articles [...] of this Convention, States Parties shall, as a matter of priority, return the confiscated proceeds of crime or property to the requesting State Party which is established to be the legitimate owner of the confiscated property.

“3. States Parties may, by joint agreement, consider concluding agreements or arrangements on:

“(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

“(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property.”

⁵ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman requested Mexico and the Netherlands to submit a revised consolidated version of their proposals for this article for the second reading of the draft text by the Ad Hoc Committee.

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations considered this option a good basis for further consideration of this article. Some delegations pointed out that this article was closely related to articles 67 (Recovery mechanisms) and 71 (Disposition of assets) and that, therefore, the Ad Hoc Committee should consider all of these articles together at the second reading of the draft text.

Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds of crime or property to their legitimate owners or, in the case of embezzled public funds, reimburse such public funds.

“3. When acting on the request made by another State Party in accordance with article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation] of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

“(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

“(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

“Option 2

“Disposal of confiscated proceeds of crime or property and the return of such proceeds to their countries of origin or to countries or persons authorized to receive them

“1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

“2. Each State Party shall adopt, in accordance with the fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

“3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

“4. When acting on the request made by another State Party in accordance with articles [...] [Confiscation and seizure] and [...] [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without

prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.”

“Article 62⁷

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

“1. Notwithstanding the provisions of articles [...] [Confiscation and seizure], [...] [International cooperation for the purposes of confiscation] and [...] [Disposal of confiscated proceeds] 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.

“Article 67

“Recovery mechanisms

“Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

“... ”

“(e) Consider adopting such measures as may be necessary to provide for the restitution of illicitly acquired assets to the requesting State or to other victims of crimes; and⁸

“(f) Consider adopting such other measures as may be necessary to facilitate the recovery of illicitly acquired assets.”⁹

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was the view of the Ad Hoc Committee that this article would need to be considered in conjunction with articles 60 (International cooperation for purposes of confiscation), 61 (Disposal of confiscated proceeds of crime or property), 68 (Special cooperation provisions) and 71 (Disposition of assets) at the second reading of the draft text. Also during the first reading, Zambia proposed the deletion of this article, as it considered that its contents were adequately covered in article 61 (see A/AC.261/L.71).

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations expressed the view that the inclusion of reference to other victims ran contrary to the notion that assets should be returned to the State. It would then be up to that State to receive and process claims of natural or legal persons, or other States, that claimed a right in respect of the assets in question. Further, many delegations expressed their discomfort with the use of the term “restitution”, which might not be equivalent to return. In any event, those delegations stressed the need to review carefully the terminology used in order to standardize it and avoid the uncertainty created by the interchangeable employment of different terms to describe what appeared to be the same concept.

⁹ During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations proposed that the formulation of subparagraphs (e) and (f) should be amended to make them more binding.

*“Article 71¹⁰
“Disposition of assets*

“1. Illicitly acquired assets recovered pursuant to this chapter shall be disposed of in accordance with domestic law. When acting on the request of another State Party under this chapter, States Parties shall, to the extent permitted by domestic law:

“(a) Give priority consideration to transferring the recovered assets in such a manner as to compensate the victims of the crime or to return the assets to their legitimate owners;

“(b) Where appropriate, consider requiring that all or a portion of the recovered assets be used to support anti-corruption initiatives and programmes;

“(c) Where appropriate, consider sharing confiscated assets with foreign authorities that assisted in the investigation, prosecution or judicial proceeding leading to the confiscation;

“(d) Where appropriate, the requested State may deduct reasonable expenses incurred in the investigation, prosecution or judicial proceeding leading to the recovery of illicitly acquired assets prior to transferring or sharing such recovered assets pursuant to this chapter.

“2. Each State Party shall adopt such measures as may be necessary to establish, consistent with principles of its domestic law:

“(a) A mechanism for the consideration of claims by another State Party against illicitly acquired assets involved in a confiscation proceeding; and

“(b) Authority to share confiscated assets with foreign authorities in recognition of assistance provided that leads to confiscation.”

Notes by the Secretariat

2. At its fourth session (Vienna, 13-24 January 2003), the Ad Hoc Committee decided to consider article 61 together with article 71. Proposals regarding this article were made by France (A/AC.261/L.158) and Algeria (A/AC.261/L.171). The text proposed by Algeria was as follows:

*“Article 61
“Disposal of confiscated proceeds of crime or property*

“1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [International cooperation for purposes of confiscation] of this Convention shall be managed by that State Party in accordance with the provisions of this Convention.

¹⁰Following the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman requested delegations to engage in informal consultations in order to revise this article, in conjunction with articles 61 and 62, for the purposes of the second reading of the draft text. As in the case of articles 61 (Disposal of confiscated proceeds of crime or property) and 62 (Return of property to the country of origin in cases of damage to state property), several delegations expressed the view that recovered assets should be returned to the requesting State and that the matter of the disposal of those assets should be left to that State. Following the first reading of the draft text, Pakistan submitted a proposal for an alternative formulation of this article. That proposal was to be made available to the Ad Hoc Committee for the second reading of the draft text.

“2. When acting in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention, States Parties shall give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party.

“3. For purposes of returning the proceeds of crime or property to their legitimate owners or of giving compensation to the victims of the crime, the parties concerned shall submit claims to the requesting State Party that has benefited from the return of the confiscated proceeds of crime or property.

“4. The requested State Party and the requesting State Party may consider concluding agreements or arrangements on:

“(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention or to intergovernmental bodies specializing in the fight against corruption;

“(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property;

“(c) Where appropriate, sharing confiscated assets with foreign authorities that assisted in the judicial proceeding leading to the confiscation.”

With regard to article 71, Pakistan suggested that the affected State party should design a legislative method to ensure that proceeds reach the victims and owners of the property and therefore proposed the following language (see A/AC.261/11):

“1. Illicitly acquired assets confiscated and taken over by a requested State Party pursuant to articles [...] [articles on preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds] shall be returned to the affected State or disposed of in the following manner:

“(a) If the assets are in the nature of transferable funds, they shall be immediately transferred to the affected State;

“(b) If the assets are in the nature of immovable property, stocks or other instruments, they shall be sold, the affected State shall be informed and the proceeds shall be transferred to the affected State;

“(c) If the assets are found to be in any other form or thing of value, the affected States shall be consulted on their disposal and the proceeds shall be transferred to the affected State.

“2. While carrying out the disposal in the manner described above, the requested State may allow the person in whose name the assets were hidden, within a predetermined time limit, to provide evidence of the legitimacy of the origin of the assets, funds or property.

“3. The affected State, after receiving the returned illicitly acquired assets, shall be responsible for making payments to the victims, potential claimants or

rightful owners or other rightful recipients within the State and, in that regard, the affected State shall pass the necessary legislation.

“4. The requested State, after having returned the illicitly acquired assets to the affected State in accordance with paragraph 1 of this article, shall no longer be held responsible for any claims in respect of the assets from any victim, potential owner, or other State.”

Following an extensive debate, the Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, chaired by Switzerland, and requested it to produce a revised text for articles 61 and 71, considering also article 62 and taking into account the existing text of article 61, option 1, article 71, the proposals of Algeria and France, the proposal of Pakistan (A/AC.261/11) and the comments made during the discussion. The informal working group requested its chairperson to prepare a consolidated text, which could be considered by the working group, possibly at the fifth session of the Ad Hoc Committee. Following the debate mentioned above, France submitted a revised proposal (A/AC.261/L.158/Rev.1), according to which the words “or, in the case of embezzled public funds, reimburse such public funds” would be deleted from paragraph 2 and a new paragraph would be added to read as follows:

“4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this article, for offences of embezzlement of public funds or of laundering of embezzled public funds, as referred to in articles [...] [Embezzlement, misappropriation, [other] diversion or [misuse] of property by a public official] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention, where the confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation], paragraph 1 (*b*), of this Convention on the basis of a final decision by a court in the territory of the requesting State Party, the requested State Party shall return to the requesting State Party the confiscated property, as defined in article [...] [Confiscation and seizure], paragraph 1, of this Convention, in accordance with ways and means to be defined by bilateral agreement or arrangement between the States Parties concerned. The requested State Party shall deduct from the amounts returned all costs incurred by it in the course of the procedure.”

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

3. Pursuant to a decision taken at its fourth session, the Ad Hoc Committee devoted the informal consultations during its fifth session to consideration of, inter alia, chapter V of the draft convention with a view to facilitating further deliberations and action on the provisions contained therein, including articles 61 and 62.

Rolling text (A/AC.261/3/Rev.4)

*“Article 61¹¹
“[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 of¹² 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,]¹³ 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 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:¹⁴

“(a) [To the extent permitted by its domestic law and if so requested,]¹⁵ give priority consideration to returning confiscated proceeds of crime or property to the requesting State Party, so that it can make restitution¹⁶ to the victims of the crime or return such proceeds of crime or property to their legitimate owners;¹⁷

“(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

¹¹The text below (see also A/AC.261/L.196/Add.1) intends to capture, to a certain degree, views expressed during the informal consultations at the fifth session of the Ad Hoc Committee. 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 therefore 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.

¹²A number of delegations indicated the need for a better formulation and proposed replacing this wording with “returned to the State of origin”.

¹³The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat jointly proposed to insert after the words “when acting on the request made by another State Party” the words “or a public international organization” (see A/AC.261/L.212, annex).

¹⁴Several 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”.

¹⁵A 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 party/State of origin.

¹⁶During 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”.

¹⁷A 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.

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.^{18, 19}

“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 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;²⁰

“(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.”²¹

“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

¹⁸A 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.

¹⁹At the fifth session of the Ad Hoc Committee, the Russian Federation proposed an amended version of paragraph 3 (A/AC.261/L.202) as follows:

“3. When acting on the request made by another State Party, the requested State Party shall return confiscated assets that have been illicitly acquired through acts of corruption to the requesting State Party so that the latter can dispose of such assets in accordance with its domestic law, in particular by giving compensation to the victims of the crime or by returning such assets to their legitimate owners. Such return shall be effected in accordance with the procedure determined by agreements between the States Parties concerned. In such cases, all confiscated assets shall be returned or compensation shall be given for their value, taking into account paragraph 5 of this article.”

²⁰Such contributions shall not be accountable under official development aid.

²¹At the fifth session of the Ad Hoc Committee, the Libyan Arab Jamahiriya proposed to add a new paragraph to article 61 (see A/AC.261/L.203) on establishing a fund (or funds) in which confiscated assets that were the subject of claims might be deposited until such time as the dispute over them had been resolved, in accordance with the provisions of article 80 (Settlement of disputes).

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.”²²

Notes by the Secretariat

4. Article 71 was deleted, as the relevant text proposed by the United States was withdrawn during the informal consultations.

5. The relevant provisions of article 67 were not further taken up, as it was agreed that they were reflected in article 61.

Sixth session: Vienna, 21 July-8 August 2003

Pakistan (A/AC.261/19): amendments to the proposal on article 61 contained in document A/AC.261/15 and Corr.1²³

*“Article 61 “Return of assets”*²⁴

“1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Seizure and confiscation] [Freezing, seizure and confiscation] or [...] [International cooperation for purpose of confiscation] of this Convention shall be returned by that State Party to the requesting State or to the affected State in accordance with the provisions of this Convention.”²⁵

“2. Each State Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to take a decision as to whether to return proceeds of crime or property through confiscation measures under this Convention, taking into account the rights of bona fide third parties.”²⁶

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

²² Article 62 was not considered during the informal consultations, on the understanding that its content might eventually be reflected in article 61.

²³ The submission of these amendments were not intended to prejudice the principled national position of Pakistan that there should not be a distinction between “illicitly acquired assets” and “proceeds of crime”.

²⁴ The title is amended in order to emphasize one of the dominant concepts in the draft convention.

²⁵ This refers to the possibility of direct return without involving confiscation proceedings.

²⁶ “Third parties” should mean distinct third parties and not economic intermediaries or legal and/or financial consultants. Pakistan suggested that this should be so recorded in the *travaux préparatoires*.

technical assistance] [anti-corruption initiatives and programmes], or use them to finance specific development projects.²⁷

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

“5. In cases of illicitly acquired assets²⁸ and other funds referred to in article [...] [Embezzlement, misappropriation, diversion or misuse of property by a public official] and laundering of such assets, the same shall be returned to the requesting affected State²⁹ on the basis of an enforceable judgement in the requesting State, or of a decision taken by the competent authority in the requested State.

“6. The requested State Party fulfilling its obligation under paragraph 5 of this article shall not be entitled to sharing.³⁰ However,³¹ where appropriate, unless the States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in the investigations, prosecutions and administrative and judicial proceedings leading to the recovery of illicitly acquired assets prior to returning such recovered assets pursuant to the provisions of articles [...] of this chapter.

“7. Where the requesting affected State Party, in making a request pursuant to the provisions of articles [...] of this chapter, presents reasonable grounds for asserting that proceeds of crime referred to in paragraph 1 of this article are indeed derived from illicitly acquired assets, then the requested State will take due account of such an assertion.”³²

Russian Federation (A/AC.261/L.202)

It was proposed to amend paragraph 3 to read as follows:

“3. When acting on the request made by another State Party, the requested State Party shall return confiscated assets that have been illicitly acquired through acts of corruption to the requesting State Party so that the latter can dispose of such assets in accordance with its domestic law, in particular by giving compensation to the victims of the crime or by returning such assets to their legitimate owners. Such return shall be effected in accordance with the procedure determined by agreements between the States Parties concerned. In such cases, all confiscated assets shall be returned or compensation shall be given for their value, taking into account paragraph 5 of this article.”

²⁷The texts of subparagraphs (a) and (b) of paragraph 4 of the proposal of Switzerland (A/AC.261/15 and Corr.1) have been combined into a single text.

²⁸Illicitly acquired assets” include not only embezzled funds (as referred to in the proposal of Switzerland), but also funds diverted from state funds, misappropriation, criminal breach of trust, kickbacks and commissions accumulated from the diversion of such funds.

²⁹“Affected State” could be defined as a State “from whom or from where the assets have been illicitly acquired” in article 2 (Definitions [Use of terms]).

³⁰Concept drawn from the last line in paragraph 3 (b) of the proposal of Switzerland.

³¹This is almost identical to paragraph 5 of the proposal of Switzerland.

³²This paragraph balances the divergent views that two States may take on the assets in question. The requesting State may view them as illicitly acquired assets and may thus seek their prompt return with or without confiscation, while the requested State may view them as proceeds of crime and thus follow the confiscation mode of return. In such a case, the paragraph proposes that the assertion or finding of fact and determination made on facts by the requesting State must be preferred and requested.

China (A/AC.261/L.245)

It was proposed to amend paragraph 3 (a) to read as follows:

“(a) When confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation], return the confiscated property to the requesting State Party, on the basis of a final judgement or other enforceable decisions in the requesting State Party, a requirement that can be waived by the requested State Party;”

India (A/AC.261/L.229)³³*“Article 61**“Return and disposition of assets*

“1. Property confiscated by a State Party pursuant to article [...] [Freezing, seizure and confiscation] or [...] [International cooperation for purposes of confiscation] of this Convention shall be disposed of, including by return to its legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

“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 to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

“3. In accordance with articles [...] [International cooperation for purposes of confiscation] and [...] [Mutual legal assistance] of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

“(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in article [...] [Embezzlement, misappropriation or other diversion of property by a public official] and article [...] [Laundering of proceeds of corruption] of this Convention, when confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation] and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

“(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the proceeds to the requesting State Party, when the requesting State Party reasonably establishes its ownership of the said proceeds to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the proceeds;

³³The text of this proposal is a revised version submitted by India, which coordinated an open-ended informal working group at the request of the Chairman.

“(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its legitimate owners or compensating the victims of the crime.

“4. 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 return or disposition of confiscated property pursuant to this article.

“5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.”

Rolling text (A/AC.261/3/Rev.5)

“Article 61

“Return and disposition of assets

“1. Property confiscated by a State Party pursuant to article [...] [Freezing, seizure and confiscation] or [...] [International cooperation for purposes of confiscation] of this Convention shall be disposed of, including by return to its prior legitimate owners,³⁴ pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

“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 to return confiscated property,³⁵ when acting on the request made by another State Party,³⁶ in accordance with this Convention, taking into account the rights of bona fide third parties.³⁷

“3. In accordance with articles [...] [International cooperation for purposes of confiscation] and [...] [Mutual legal assistance] of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

“(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in article [...] [Embezzlement, misappropriation or other diversion of property by a public official] and article [...] [Laundering of proceeds of corruption] of this Convention, when confiscation was executed in accordance with article [...] [International cooperation for purposes of confiscation] and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

“(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article [...] [International

³⁴It was agreed that the *travaux préparatoires* would indicate that prior legitimate ownership will mean ownership at the time of the offence.

³⁵It was agreed that the *travaux préparatoires* would indicate that return of confiscated property may in some cases mean return of title or value.

³⁶The Office of Internal Oversight Services, the United Nations Office on Drugs and Crime and the Office of Legal Affairs of the Secretariat proposed to add the words “or a public international organization” (see A/AC.261/L.212, annex).

³⁷It was agreed that the *travaux préparatoires* would indicate that the domestic law referred to in paragraph 1 and the legislative and other measures referred to in paragraph 2 would mean the national legislation or regulations that enable the implementation of this article by States parties.

cooperation for purposes of confiscation] of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;³⁸

“(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

“4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses³⁹ incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

“5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.”

Notes by the Secretariat

6. At its sixth session, the Ad Hoc Committee provisionally approved article 61 of the draft convention (see A/AC.261/22, para. 22).

7. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. The amendments reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

³⁸It was agreed that the *travaux préparatoires* would indicate that subparagraphs (a) and (b) of paragraph 3 of this article apply only to the procedures for the return of assets and not to the procedures for confiscation, which are covered in other articles of the Convention. The requested State party should consider the waiver of the requirement for final judgement in cases where final judgement cannot be obtained because the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

³⁹It was agreed that the *travaux préparatoires* would indicate that “reasonable expenses” are to be interpreted as costs and expenses incurred and not as finders’ fees or other unspecified charges. Requested and requesting States parties are encouraged to consult on likely expenses.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 37

Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

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 to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

C. Interpretative notes

The interpretative notes on article 57 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 66-70) are as follows:

Paragraph 1

- (a) Prior legitimate ownership will mean ownership at the time of the offence;

Paragraph 2

(b) Return of confiscated property may in some cases mean return of title or value;

(c) The domestic law referred to in paragraph 1 and the legislative and other measures referred to in paragraph 2 would mean the national legislation or regulations that enable the implementation of this article by States parties;

Paragraph 3

Subparagraphs (a) and (b)

(d) Subparagraphs (a) and (b) of paragraph 3 of this article apply only to the procedures for the return of assets and not to the procedures for confiscation, which are covered in other articles of the Convention. The requested State party should consider the waiver of the requirement for final judgement in cases where final judgement cannot be obtained because the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases;

Paragraph 4

(e) "Reasonable expenses" are to be interpreted as costs and expenses incurred and not as finders' fees or other unspecified charges. Requested and requesting States parties are encouraged to consult on likely expenses.

Article 58. Financial intelligence unit

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “Financial intelligence units” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

*“Article [...]”¹
“Financial intelligence units*

“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, establishing a financial intelligence unit that will freely exchange with other such units any information that it possesses without the need for legal formalities. The recipient financial intelligence unit should be able to use that information within its country in accordance with the legislation governing it.”

¹ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 66²

“Financial intelligence units

“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, establishing a financial intelligence unit that will exchange with other such units any information that it possesses.³ If granted permission by the financial intelligence unit providing the information, the recipient financial intelligence unit shall be able to use that information within its country, in accordance with its national legislation.”⁴

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“[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 to use that information within its territory, in accordance with its national legislation.”⁵

² Revised text submitted by Peru after the first reading of the draft text, at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (see A/AC.261/L.81).

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United Kingdom proposed to replace the latter part of this sentence with the following: “... [a financial intelligence unit that will] be responsible for receiving, analysing and disseminating to the competent authorities disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation”.

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed to amend the title of the article to read “Anti-corruption intelligence units” and to amend the text of the first sentence of this article to read as follows: “States Parties shall cooperate with one another for the purpose of detecting, preventing and combating the transfer of illicit funds and assets derived from acts of corruption and in promoting ways and means of recovering such funds and assets by, inter alia, establishing anti-corruption intelligence units that will share information.”

⁵ 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. At the subsequent version of the draft text, the sentence was deleted (see below).

Sixth session: Vienna, 21 July-8 August 2003

Notes by the Secretariat

2. At the sixth session of the Ad Hoc Committee, it was suggested that the use of the phrase “assets, including funds, of illicit origin derived from acts of corruption” would need to be reviewed in the light of the agreement reached on chapter V of the draft convention. The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention took into account the following three points: the footnote to article 2, subparagraph (f), of the draft convention would state that the *travaux préparatoires* would indicate that the phrase “assets of every kind” was understood to include funds; the draft convention did not provide a definition of “assets” per se; and the term “proceeds of crime” was defined in article 2, subparagraph (g). The consistency group concluded that, in the phrase in question, the words “including funds” were redundant and therefore should be removed and that the word “assets” should be replaced with a more appropriate word. Although some members of the consistency group initially suggested replacing the entire phrase with the words “proceeds of crime established in accordance with this Convention”, the consensus was that the phrase “proceeds of offences established in accordance with this Convention” would be the most appropriate, in that it would ensure consistency and avoid tautology.

Rolling text (A/AC.261/3/Rev.5)

“Article 66 “Financial intelligence unit

“States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.”⁶

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee provisionally approved article 66 of the draft convention (see A/AC.261/22, para. 22).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁶It was agreed that the *travaux préparatoires* would indicate that each State party may consider creating a new financial intelligence unit, establishing a specialized branch of an existing financial intelligence unit or simply using its existing financial intelligence unit. It was further agreed that the *travaux préparatoires* would indicate that this article should be interpreted in a manner consistent with paragraph 1 (b) of article 14 of the convention.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 58
Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

C. Interpretative notes

The interpretative note on article 58 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 71) is as follows:

Each State party may consider creating a new financial intelligence unit, establishing a specialized branch of an existing financial intelligence unit or simply using its existing financial intelligence unit. Further, this article should be interpreted in a manner consistent with paragraph 1 (b) of article 14 of the convention.

Article 59. Bilateral and multilateral agreements and arrangements

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Notes by the Secretariat

1. The part of the rolling text contained in document A/AC.261/3 (Part IV) that referred to chapter V of the draft convention was a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). That rolling text of chapter V was divided into two parts solely for reasons of presentation and without any other implication or significance. The first part of the rolling text contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The article on “Additional provisions” was included in the second part of the rolling text, which contained a consolidation of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19). The second part was produced by Peru and the United States during the Informal Preparatory Meeting in Buenos Aires.

Rolling text (A/AC.261/3 (Part IV))

“Article [...]”
“Additional provisions”

“... ”

“2. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken and to facilitate the disposition of assets pursuant to this chapter.”

“... ”

Notes by the Secretariat

2. The draft text of the article on “Additional provisions” appeared as article 72 in the rolling text of the draft convention contained in document A/AC.261/3/Rev.1/Add.1 with no further substantial change.

3. During the first reading of the draft text of the article, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), some delegations pointed out that paragraph 2 of article 72 should not be mandatory.

4. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), it was decided to delete article 72 because of its similarity with articles 60 (International cooperation for purposes of confiscation) and 74. Paragraph 2 of article 72, in particular, was identical to the draft text of paragraph 10 of article 60, contained in the rolling text in document A/AC.261/3/Rev.4 (see also under article 55 of the convention). At the sixth session of the Ad Hoc Committee, paragraph 10 of article 60 was moved to form a new article 60 bis (see below).

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

*“Article 60 bis
“Bilateral and multilateral agreements and arrangements*

“States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter.”

Notes by the Secretariat

5. At its sixth session, the Ad Hoc Committee provisionally approved the insertion of the new article 60 bis in the draft convention (see A/AC.261/22, para. 22).

6. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

*Article 59
Bilateral and multilateral agreements and arrangements*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI

Technical assistance and information exchange

Notes by the Secretariat

The initial title of chapter VI of the draft convention read “Technical assistance, training and collection, exchange and analysis of information”. At the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), the title was shortened to read “Technical assistance and information exchange” (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

Article 60. Training and technical assistance

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

*“Article [...]”
“Additional provisions”*

“... ”

“4. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.¹”

“5. States Parties shall promote training and technical assistance among States Parties, international and regional bodies and private institutions with the objective of facilitating international cooperation and the identification and recovery of illicitly acquired assets. Such assistance should also aim to enhance the ability of States Parties to meet the requirements of article [...] [Contents of a request] of this chapter.”

“6. States Parties shall, in conformity with their respective legal systems, afford one another the widest measure of technical assistance in preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and in the recovery of such assets by their countries of origin through the promotion of the mutual exchange of relevant experience and specialized knowledge.¹”

“7. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and promoting the recovery of such assets by their countries of origin. Those programmes shall be concerned with:

“(a) Detection and freezing of transfers of assets, including funds, of illicit origin derived from acts of corruption;

¹ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“(b) 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;

“(c) Appropriate and efficient judicial and administrative mechanisms and methods for facilitating the repatriation of assets, including funds, of illicit origin derived from acts of corruption.¹

“Article 64

“Training and technical assistance

“Option 1²

“1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

“(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

“(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

“(c) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

“(d) Collection of evidence;

“(e) Control techniques in free trade zones and free ports;

“(f) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

“(g) Methods used in combating corruption and criminal acts related specifically to corruption, committed through the use of computers, telecommunication networks or other forms of modern technology; and

“(h) Methods used in the protection of victims and witnesses.

“2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussions on problems of mutual concern, including the special problems and needs of transit States.

²Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22) and based on article 29 of the Organized Crime Convention (with slight changes).

“3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

“4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

“Option 2¹

“1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in particular, in their respective national programmes and plans for combating corruption.

“2. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action plans for combating corruption with the participation of national authorities and civil society.

“3. Each State Party shall formulate, develop or upgrade training programmes designed specifically for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

“(a) Identification of acts of corruption with a view to their subsequent punishment;

“(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

“(c) Gathering of evidence and investigative methods;

“(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

“4. States Parties shall, in affording mutual technical assistance in preventing and combating corruption, organize, when appropriate, subregional, regional and international conferences and seminars for the purpose of promoting cooperation and mutual assistance.

“5. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

“6. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

“7. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition in applying this Convention through technical assistance programmes and projects.

“8. States Parties shall make 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 the implementation of this Convention.

“Option 3³

“1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, magistrates and customs personnel and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

“(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

“(b) Techniques used by persons suspected of involvement in offences covered by this Convention;

“(c) Detection and monitoring of the movements of proceeds of crime, property or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

“(d) Collection of evidence;

“(e) Methods used in combating corruption committed through the use of computers, telecommunication networks or other forms of modern technology; and

“(f) Methods used in the protection of victims and witnesses, persons who report offences, informers and experts.

“2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, where appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

“3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

“4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

“Option 4⁴

“1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

“(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

“(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

“(c) Monitoring of the movement of contraband;

“(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

“(e) Collection of evidence;

“(f) Control techniques in free trade zones and free ports;

“(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

“(h) Methods used in combating crime committed through the use of computers, telecommunication networks or other forms of modern technology; and

“(i) Methods used in the protection of victims and witnesses.

“2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

“3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

⁴ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24).

“4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.”

Second session: Vienna, 17-28 June 2002

Notes by the Secretariat

1. The article on “Additional provisions” appeared as article 72 in the rolling text contained in document A/AC.261/3/Rev.1/Add.1 and its content did not change.

2. During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that the provisions of article 72 had been included in the original proposal in order to make it complete, but they overlapped with other provisions of the draft convention. Consequently, there was agreement that the provisions of this article should be merged with other provisions covering the same issues.

3. During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words “acts of corruption” should be replaced with the words “offences covered by this Convention” throughout the text of article 72, for reasons of consistency with other provisions of the draft convention.

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 74⁵

“Training and technical assistance

“1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in particular, in their respective national programmes and plans for combating corruption.⁶

“Option 1⁷

“2. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff.

⁵ Revised text, consolidating all previous options for this article, submitted by the authors of those options after the first reading of the draft text, at the second session of the Ad Hoc Committee.

⁶ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

⁷ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13), the Philippines (A/AC.261/IPM/24) and Turkey (A/AC.261/IPM/22).

Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

“(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

“(b) [Routes and]⁸ techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

“(c) Detection and monitoring of the movement of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

“(c bis) Monitoring of the movement of contraband;⁹

“(d) Collection of evidence;

“(e) Control techniques in free trade zones and free ports;⁸

“(f) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;⁸

“(g) Methods used in combating corruption and criminal acts related specifically to corruption, committed through the use of computers, telecommunication networks or other forms of modern technology; and

“(h) Methods used in the protection of victims and witnesses [, persons who report offences, informers and experts].¹⁰

“Option 2⁶

“2. Each State Party shall formulate, develop or upgrade training programmes designed specifically for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

“(a) Identification of acts of corruption with a view to their subsequent punishment;

“(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

“(c) Gathering of evidence and investigative methods;

“(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

“2 bis. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action

⁸Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22).

⁹Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24).

¹⁰Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

plans for combating corruption with the participation of national authorities and civil society.⁶

“3. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use subregional, regional and international conferences and seminars to promote cooperation [and technical assistance]⁶ and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

“Option 1⁷

“4. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

“Option 2⁶

“4. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

“Option 1⁷

“5. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

“Option 2⁶

“5. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

“6. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition in applying this Convention through technical assistance programmes and projects.⁶

“7. States Parties shall make 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 the implementation of this Convention.”⁶

Fourth session: Vienna, 13-24 January 2003*Notes by the Secretariat*

4. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was decided to delete article 72 because of its similarity with articles 60 (International cooperation for purposes of confiscation) and 74. It was also agreed that any new elements contained in article 72 would be incorporated, in square brackets, into articles 60 and 74. The Vice-Chairman with responsibility for this chapter of the draft convention requested Canada and the United States to identify those new elements. These elements were incorporated into articles 60 and 74 as appropriate.

Rolling text (A/AC.261/3/Rev.3)*“Article 74¹¹**“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, which could include secondments and internships, shall be concerned with, inter alia:¹²

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

“(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;]¹³

“(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;]¹⁴

“[(f) Detecting and freezing of the transfer of assets, including funds, of illicit origin derived from acts of corruption;]¹⁵

“[(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;]^{16, 17}

¹¹The text of this article is a revised version submitted by Canada in consultation with Peru and the United Kingdom at the request of the Vice-Chairman with responsibility for this chapter of the draft convention following the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The revised version of this article incorporates elements of article 72 (Additional provisions). The Ad Hoc Committee did not review this revised text after its distribution.

¹²This text is a combination of the chapeau of paragraph 2 of options 1 and 2 and revised subparagraphs from option 2, together with subparagraphs (b) and (c), to make provision for technical assistance to help implement the preventive measures contained in the draft convention.

¹³Text taken from former article 72, paragraph 5.

¹⁴Text taken from former article 72, paragraphs 5-7.

¹⁵Text taken from former article 72, paragraphs 5 and 7 (a).

¹⁶Text taken from former article 72, paragraph 7 (b).

“[(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;]¹⁸

“(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, afford [consider offering] 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,]¹⁹ which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.²⁰

“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.²¹

“4. States Parties shall [consider] assist[ing] one another 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 [civil]²² society,²³ 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.]²⁴

“6. States Parties shall, when appropriate, use subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern,²⁵ [, 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

¹⁷Some delegations expressed the view that, as subparagraphs (e)-(g) of this article dealt essentially with money-laundering, they could be replaced by a single subparagraph, which could read as follows: “Effective measures to prevent, detect and combat laundering of money or assets, especially those of illicit origin derived from acts of corruption.”

¹⁸Text taken from former article 72, paragraph 7 (c).

¹⁹Text taken from former article 72, paragraph 6.

²⁰This text, which was based on paragraph 1 and paragraph 4, option 1, of article 74 (as contained in A/AC.261/3/Rev.1/Add.1), was submitted by Peru.

²¹This text was taken from paragraph 5, option 1, of article 74 (as contained in A/AC.261/3/Rev.1/Add.1). The first part of the paragraph was removed, as some delegations argued that there did not appear to be a reason for the paragraph to be limited to existing agreements and arrangements.

²²Some delegations suggested the deletion of the word “civil”.

²³This text was taken from paragraph 2 bis, option 2, of article 74 (as contained in A/AC.261/3/Rev.1/Add.1).

²⁴Some delegations were of the view that, as this paragraph dealt with cooperation rather than technical assistance, it should be moved to article 57 (Other cooperation measures).

²⁵This text, which was based on paragraph 3, option 2, of article 74 (as contained in A/AC.261/3/Rev.1/Add.1), had been modified to avoid duplication with paragraph 2.

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.”²⁶

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“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;

“(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

²⁶In paragraph 7, option 2, of article 74 (as contained in A/AC.261/3/Rev.1/Add.1), the word “make” was replaced with the words “consider making”.

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.

“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.”

Notes by the Secretariat

5. At its fifth session, the Ad Hoc Committee provisionally approved article 74 of the draft convention (see A/AC.261/16, para. 25).

6. At the sixth session of the Ad Hoc Committee (Vienna, 21 July-8 August 2003), it was suggested that the use of the phrase “assets, including funds, of illicit origin derived from acts of corruption” would need to be reviewed in the light of the agreement reached on chapter V of the draft convention. The consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention took into account the following three points: the footnote to article 2, subparagraph (f), of the draft convention would state that the *travaux préparatoires* would indicate that the phrase “assets of every kind” was understood to include funds; the draft convention did not provide a definition of “assets” per se; and the term “proceeds of crime” was defined in article 2, subparagraph (g). The consistency

group concluded that, in the phrase in question, the words “including funds” were redundant and therefore should be removed and that the word “assets” should be replaced with a more appropriate word. Although some members of the consistency group initially suggested replacing the entire phrase with the words “proceeds of crime established in accordance with this Convention”, the consensus was that the phrase “proceeds of offences established in accordance with this Convention” would be the most appropriate, in that it would ensure consistency and avoid tautology. The new wording was incorporated into the draft convention (see A/AC.261/3/Rev.5).

7. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 60

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 deal, inter alia, with the following areas:

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

(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 proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(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 proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

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. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61. Collection, exchange and analysis of information on corruption

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 63

“Collection, exchange and analysis of information on the nature of corruption

“Option 1¹

“1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in corruption and criminal acts related specifically to corruption in its territory, the circumstances in which these offences are committed, as well as the professional groups and technologies involved.

“2. States Parties shall consider developing and sharing analytical expertise concerning corruption and criminal acts related specifically to corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

“3. States Parties shall consider monitoring their policies and actual measures to combat corruption and criminal acts related specifically to corruption and making assessments of their effectiveness and efficiency.

“Option 2²

“1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

“2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 28 of the Organized Crime Convention (with slight changes).

² The first three paragraphs of this option contain consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and the Philippines (A/AC.261/IPM/24).

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

“4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.²

“5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of the centre.”³

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 73

“Collection, exchange and analysis of information on the nature of corruption

“Option 1⁴

“1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in corruption and criminal acts related specifically to corruption in its territory, the circumstances in which these offences are committed, as well as the professional groups and technologies involved.

“2. States Parties shall consider developing and sharing analytical expertise concerning corruption and criminal acts related specifically to corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

“3. Each State Party shall consider monitoring its policies and measures to combat corruption and criminal acts related specifically to corruption and making assessments of their effectiveness and efficiency.⁵

³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was general preference for this option as the basis for the second reading of the draft text. Many delegations were in favour of finding an appropriate way of incorporating elements of paragraph 4 of option 2 into this option, even though for some delegations it was necessary to clarify what was meant by “civil society” and to ensure that there was no overlapping with article 13. There was also considerable discussion about paragraph 5 of option 2 (see the footnote to that paragraph for details).

“Option 2⁶

“1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

“2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

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

“4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.

“5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of the centre.”⁷

⁵ The formulation of this paragraph was amended during the first reading of the draft text, at the second session of the Ad Hoc Committee, in order to remove any possible ambiguity created by the word “monitoring” and to clarify that the action required was incumbent upon each State party.

⁶ Following the first reading of the draft text, at the second session of the Ad Hoc Committee, and after the discussion reflected in the footnotes to option 1 above and paragraph 5 of option 2 below, 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, 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 elaboration of studies on the causes and effects of corruption.”

The proposed new article would supersede option 2.

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations were not favourable to the establishment of a new entity, as foreseen in this paragraph. Those delegations held the view that doing so would entail the risk of diluting resources available for technical cooperation. Further, the functions that the entity would perform according to the proposal fell within the mandate of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention. In addition, the proposal seemed to be duplicating and to some extent contradicting proposals under consideration in connection with the secretariat of the proposed body for monitoring implementation of the convention. The Chairman suggested that the functions foreseen in this paragraph could be borne in mind when considering the formulation of the latter proposals.

Fourth session: Vienna, 13-24 January 2003**Rolling text (A/AC.261/3/Rev.3)***“Article 73⁸**“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 analytical expertise concerning corruption and information on best practices to prevent and combat corruption. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

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

“4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of preventing, deterring, detecting, investigating and punishing acts of corruption.”⁹

Fifth session: Vienna, 10-21 March 2003**Rolling text (A/AC.261/3/Rev.4)***“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.

⁸ The text of this article is a revised proposal submitted by Austria, Mexico and the Netherlands (A/AC.261/L.165) at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not review this text after its distribution.

⁹ 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, 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.”

“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.]”¹⁰

Notes by the Secretariat

1. The title of article 73 was changed to read “Collection, exchange and analysis of information on corruption” (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

2. At its fifth session, the Ad Hoc Committee provisionally approved article 73 of the draft convention (see A/AC.261/16, para. 25).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 61

Collection, exchange and analysis of information on 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.

¹⁰As already mentioned in footnote 9 above, 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, to be entitled “Citizen participation”. At its fifth session, the Ad Hoc Committee decided to consider that proposal during its consideration of chapter II of the draft convention, amended to 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.”

Article 62. Other measures: implementation of the Convention through economic development and technical assistance

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 65

“Other measures: implementation of the Convention through economic development and technical assistance

“Option 1¹

“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 and criminal acts related specifically to corruption;

“(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption and criminal acts related specifically to 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;

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001) and based on article 30 of the Organized Crime Convention (with slight changes).

“(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 and criminal acts related specifically to corruption.

“Option 2²

“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 and on sustainable development in particular.

“2. States Parties shall make specific 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 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.

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

“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.

“Option 3³

“Financial assistance

“Each State Party shall search for possibilities to share the revenues that it has obtained from its struggle against the crimes covered by this Convention with the other States Parties whose interests have been damaged by such crimes. Moreover, developed countries shall provide the necessary support to the development efforts of developing countries and provide the required tools for effective struggle against international corruption.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 75⁴

“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 and criminal acts related specifically to corruption;

“(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption and criminal acts related specifically to 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

³ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

⁴ Text revised by Austria, Colombia and the Netherlands, submitted at the request of the Chairman following the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.86).

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 and criminal acts related specifically to corruption.”⁵

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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

⁵Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

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.”⁶

Notes by the Secretariat

1. At its fifth session (Vienna, 10-21 March 2003), the Ad Hoc Committee provisionally approved article 75 of the draft convention (see A/AC.261/16, para. 25).

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 62

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;

⁶ 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) (see the text of the proposal under article 10 of the convention on “Public reporting”). At the sixth session of the Ad Hoc Committee, Germany indicated its intention to withdraw the proposal on the addition of this new article and proposed the insertion of a relevant note for the *travaux préparatoires* (see the interpretative note under article 10 of the convention).

(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.

C. Interpretative notes

The interpretative note on article 62 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 72) is as follows:

Paragraph 2

Subparagraph (c)

This subparagraph is not intended to prejudice the application of article 57.

Chapter VII

Mechanisms for implementation

Notes by the Secretariat

1. At the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001), Austria and the Netherlands suggested that chapter VII of the draft convention should include an article entitled “Monitoring and follow-up”, but indicated that the text should be completed at a later stage (see A/AC.261/IPM/4).

2. The initial title of chapter VII of the draft convention read “Mechanisms for monitoring implementation”. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), a number of delegations were of the view that “monitoring” was not the appropriate expression and should be replaced with the term “follow-up”. At the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), the title was changed to read “Mechanisms for implementation” (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

3. During the second reading of the draft text of this chapter, at the fourth session of the Ad Hoc Committee, there was extensive debate regarding the question of what would be the appropriate features of a mechanism or system to ensure the implementation of the future convention. Most delegations were of the view that such a mechanism or system would be workable, effective, efficient, transparent, cost-efficient, proportionate, equitable, commanding consensus, consistent across geographical regions and credible. The system should not be too complicated, cumbersome or bureaucratic and it should not be structured in a way that would divert funds required for technical assistance or that would deter participation. Some delegations also wished to see a system that would involve civil society. Most delegations were of the view that the system devised for the implementation of the Organized Crime Convention, with the establishment of a conference of the parties and the formulation of a sufficiently general mandate for that body, constituted a good model to follow. For a number of delegations, it would be worthwhile to explore to what extent some departures from the Organized Crime Convention would be justifiable owing to the different nature of this convention. In particular, according to those delegations, it would be worthwhile to explore giving the conference of the parties guidance in the convention about the modalities at its disposal to perform its tasks, while avoiding going into excessive detail. According to those delegations, it would also be important to ensure that the system devised for the convention took into account existing regional mechanisms and strived to avoid unnecessary duplication. For most delegations, the most appropriate approach would be to emulate the Organized Crime Convention, leaving details and procedures up to the conference of the parties to determine. Those delegations expressed the view that additional proposals could certainly be examined, but the Ad Hoc Committee should avoid investing excessive time in exploring details, which could distract it from deliberating on other central provisions of the draft convention. Further, those delegations held the view that a detailed follow-up system, containing a number of mechanisms whose application at the global level was considered doubtful, could make compliance onerous, deterring ratification and implementation, thus resulting in detriment to the convention. Following the conclusion of the debate, the Vice-Chairman with responsibility for chapter VII of the draft convention called for a group of Friends of the Chair to continue exploring the various solutions in order to take stock and try to consolidate and streamline the text, so as to take the process forward.

Article 63. Conference of the States Parties to the Convention

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 66

“Conference of the Parties to the Convention

“Option 1¹

“1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat and eradicate corruption and to promote and review the implementation of this Convention through a systematic follow-up programme.

“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. The Conference of the Parties shall:

“(a) Conduct annual multilateral evaluations for the periodic review of the implementation of this Convention;

“(b) Make recommendations to improve its implementation;

“(c) Facilitate the exchange of information among States Parties;

“(d) Encourage the mobilization of voluntary contributions to finance the systematic follow-up programme; and

“(e) Promote the establishment of a fund to assist least developed countries in the implementation of this Convention.

“3. Each State Party shall provide the Conference of the Parties with the information that it requires for the systematic follow-up programme concerning its programmes, plans, practices and results, as well as information on legislative and administrative measures adopted to implement this Convention.

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“Option 2²

“1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat corruption and to promote and review the implementation of this Convention.

“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. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article, including rules concerning payment of expenses incurred in carrying out those activities.

“3. 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], [...] [Other measures: implementation of the Convention through economic development and technical assistance] and [...] [Prevention] 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;

“(d) Reviewing periodically the implementation of this Convention;

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

“4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire 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 them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

“5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

“Option 3³

“States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.”

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22). Turkey suggested that the formulation of this article should take into account other international conventions, especially the Organized Crime Convention.

Notes by the Secretariat

1. During the first reading of the draft text, at the second session of the Ad Hoc Committee, Austria and the Netherlands submitted a proposal containing five articles for the chapter on “Mechanisms for monitoring implementation” (see A/AC.261/L.69). The proposed text for article 66 was as follows:

*“Article 66**“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 the cooperation between States Parties to prevent and combat corruption and to promote and review the implementation of this Convention.

“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, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that it is supported by at least one third of the Parties.

“3. At its first meeting, the Conference of the Parties shall by consensus agree upon and adopt rules of procedure and rules governing the activities set forth in paragraph 4 of this article (including rules concerning 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] 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;

“(d) Reviewing periodically the implementation of this Convention;

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

“5. The United Nations, its 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, qualified in matters covered by the Convention, and which has informed the Secretariat 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 object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.”

Egypt proposed to add the following paragraph to (renumbered) article 76 (A/AC.261/L.87):

“The Conference of the Parties shall establish any subsidiary body it deems necessary for the effective implementation of the Convention.”

Peru proposed to add the following paragraph to article 76 (A/AC.261/L.83):

“The Conference of the Parties shall have, as subsidiary bodies, two committees, one for evaluation and the other for cooperation and technical assistance, whose functions shall be established at the first meeting of the aforementioned Conference of the Parties.”

It was understood that the Ad Hoc Committee would consider all proposals during the second reading of the draft text.

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“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]⁴ States Parties to [prevent and]⁴ combat [and eradicate]⁵ corruption and to promote and review the implementation of this Convention [through a systematic follow-up programme].⁵

“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, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that it is supported by at least one third of the Parties.]⁴

“3. [At its first meeting],⁴ the Conference of the Parties shall [by consensus agree upon and]⁴ adopt rules of procedure and rules governing the activities set forth in paragraph[s] 4⁵ [and 6]⁶ of this article (including rules concerning payment of expenses incurred in carrying out these activities).⁷

“4. The Conference of the Parties shall [agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including]:^{5, 6}

“[(a)Facilitate [Facilitating] activities by States Parties under articles [...] [Training and technical assistance], [...] [Other measures: implementation of the Convention through economic development and technical assistance] and [...]

⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

⁶ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁷ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/L.69, art. 66, para. 3 (with brackets)) and by Colombia (A/AC.261/IPM/14, art. 34 (without brackets)).

[Prevention] of this Convention, including by encouraging the mobilization of voluntary contributions;]^{4, 6}

“(b) Conduct [Conducting] annual multilateral evaluations for the periodic review of the implementation of this Convention;]⁵

“(c) Make [Making] recommendations to improve [this Convention and]⁸ its implementation;]⁵

“(d) Facilitate [Facilitating] the exchange of information among States Parties [on patterns and trends in corruption and on successful practices for combating it];^{4, 6}

“(e) Review [Reviewing] periodically the implementation of this Convention;]^{4, 6}

“(f) Cooperate [Cooperating] with relevant international and regional organizations and non-governmental organizations;]^{4, 6}

“(g) Encourage [Encouraging] the mobilization of voluntary contributions to finance the systematic follow-up programme;] and⁵

“(h) Promote [Promoting] the establishment of a fund to assist least developed countries in the implementation of this Convention].⁵

“5. Each State Party shall provide the Conference of the Parties with [the]⁵ information [that it requires for the systematic follow-up programme concerning]⁵ [on]⁶ its programmes, plans, [and] practices [and results],⁵ as well as information on legislative and administrative measures adopted to implement this Convention [as required by the Conference of the Parties].^{5, 9}

“6. For the purpose of paragraphs 4 (c) and (e) of this article, the Conference of the Parties shall acquire 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 them and through such supplemental review mechanisms as may be established by the Conference of the Parties.⁶

“7. The United Nations and its 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 the Convention and has informed the Secretariat 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 object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.”⁴

⁸ Text consolidated from the proposals submitted by Austria and the Netherlands (A/AC.261/L.69) and by Colombia (A/AC.261/IPM/14).

⁹ Consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14).

Fifth session: Vienna, 10-21 March 2003*Notes by the Secretariat*

2. At the fifth session of the Ad Hoc Committee, Indonesia proposed to continue work on article 76 on the basis of the following text (see A/AC.261/L.199):

*“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 States Parties to combat corruption and to promote and review the implementation of this Convention.

“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. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs [...] and [...] of this article (including rules concerning payment of expenses incurred in carrying out those activities).

“3. 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 [...], [...] and [...] 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;

“(d) Reviewing periodically the implementation of this Convention;

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

“4. For the purpose of paragraphs [...] and [...] of this article, the Conference of the Parties shall acquire 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 them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

“5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.”

3. The Libyan Arab Jamahiriya proposed to amend paragraph 1 of article 76, to read as follows (see A/AC.261/L.198):

“1. A Conference of the States Parties to the Convention is hereby established to improve the efficiency of the States Parties and activate their cooperation, in order to prevent and eradicate corruption and develop a regular programme to follow up the implementation of this Convention.”

4. At the fifth session of the Ad Hoc Committee, an informal open-ended working group, coordinated by Egypt, was established by the Vice-Chairman with responsibility for chapter VII of the draft convention. The group made an effort to consolidate and streamline the text of article 76 to reflect the different proposals as previously submitted by Austria, Chile, Colombia, Egypt, Mexico, the Netherlands, Norway and Peru (see A/AC.261/L.197). A revised version resulting from further work of the working group was contained in document A/AC.261/L.204, which is reflected below.

Rolling text (A/AC.261/3/Rev.4)

“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 [...],¹⁰ 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;

¹⁰The text to be inserted here will depend on the outcome of the discussions on articles 76 and 76 bis (the latter was finally deleted, see part two (Deleted articles)).

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

“(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.

“[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]].”¹¹

Notes by the Secretariat

5. Regarding the text of paragraph 5 of article 76 above, some delegations pointed out that it reflected agreed language from the Convention on Biological Diversity,¹² the Stockholm Convention on Persistent Organic Pollutants¹³ and the United Nations Framework Convention on Climate Change.¹⁴ In the context of the work undertaken by the informal open-ended working group under the coordination of Egypt, this paragraph was bracketed for further consideration (see A/AC.261/L.234/Rev.1), but was finally not taken up in the subsequent rolling text of the draft convention (see below).

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 76

“Conference of the States Parties¹⁵

“1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

¹¹Consideration of this paragraph was suspended pending discussion on article 76 bis (see under part two (Deleted articles)) and on elements at present contained in article 76 bis that could be transferred to this article.

¹²United Nations, *Treaty Series*, vol. 1760, No. 30619.

¹³*Ibid.*, vol. 2256, No. 40214.

¹⁴*Ibid.*, vol. 1771, No. 30822.

¹⁵The words “to the Convention” were removed from the title of article 76, so that it would read “Conference of the States Parties” (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

“2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

“3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.¹⁶

“4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth 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], [...] [Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement], [...] [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 preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

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

“(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

“(e) Reviewing periodically the implementation of this Convention by its States Parties;

“(f) Making recommendations to improve this Convention and its implementation;

“(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

“5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire 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 them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

¹⁶It was agreed that the *travaux préparatoires* would indicate that financing should not be linked to the recovery of assets.

“6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

“7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.”¹⁷

Notes by the Secretariat

6. Additional elements in the rolling text above (see, in particular, paragraphs 4 (d) and (g), 5 and 6) were inserted in line with the work undertaken by the informal open-ended working group under the coordination of Egypt (see A/AC.261/L.234/Rev.1) and the proposal submitted by the Chairman of the group at the sixth session of the Ad Hoc Committee (see A/AC.261/L.239).

7. At its sixth session, the Ad Hoc Committee provisionally approved article 76 of the draft convention (see A/AC.261/22, para. 22).

8. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 63

Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

¹⁷It was agreed that the *travaux préparatoires* would indicate that nothing in this paragraph is intended to limit the discretion of the Conference of the States Parties as the only forum competent to consider whether the mechanism or body to assist the effective implementation of the convention is necessary.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V 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 preventing and combating it and for the return of proceeds of crime, through, *inter alia*, the publication of relevant information as mentioned in this article;

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

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire 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 them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, *inter alia*, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

C. Interpretative notes

The interpretative notes on article 63 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, paras. 73-74) are as follows:

Paragraph 3

- (a) Financing should not be linked to the recovery of assets;

Paragraph 7

(b) Nothing in this paragraph is intended to limit the discretion of the Conference of the States Parties as the only forum competent to consider whether the mechanism or body to assist in the effective implementation of the Convention is necessary.

Article 64. Secretariat

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 67¹

“Secretariat

“1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

“2. The secretariat 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 sessions 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 [...] [Conference of the Parties to the Convention], paragraph 5, of this Convention; and

“(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.”

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 77²

“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 the subsidiary body].^{3, 4}

¹ Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and by Mexico (A/AC.261/IPM/13).

³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

“2. The secretariat 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 sessions of the Conference of the Parties;⁵

“(b) Upon request, assist States Parties in providing information to [the Conference of the Parties as envisaged in article [...] [Conference of the Parties to the Convention], paragraph 5]⁵ [the subsidiary body as envisaged in article [...] [Reports from States concerning the implementation of the Convention]]³ of this Convention;⁵

“(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations;⁵

“[(d) Assist the subsidiary body in carrying out the activities set forth in article [...] [subsidiary body] of this Convention and make arrangements and provide the necessary services for the meetings of the subsidiary body];³

“(e) Upon request, assist States Parties in implementing the Convention through economic development and technical assistance as envisaged in article [...] [Other measures: implementation of the Convention through economic development and technical assistance] of this Convention;³

“(f) Offer training courses and technical assistance in improving national anti-corruption strategies; and³

“(g) 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.”³

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

1. The text below reflects the result of the work at the fifth session of the Ad Hoc Committee of an informal open-ended working group coordinated by Egypt (see A/AC.261/L.204).

Rolling text (A/AC.261/3/Rev.4)

“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]].

⁴ The texts proposed by Colombia (A/AC.261/IPM/14) and by Mexico (A/AC.261/IPM/13) are identical, as also the text proposed by Austria and the Netherlands (A/AC.261/L.69).

⁵ The texts proposed by Colombia (A/AC.261/IPM/14) and by Mexico (A/AC.261/IPM/13) are identical.

“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.”

Sixth session: Vienna, 21 July-8 August 2003

Rolling text (A/AC.261/3/Rev.5)

“Article 77 “Secretariat

“1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

“2. The secretariat shall:

“(a) Assist the Conference of the States Parties in carrying out the activities set forth in article [...] [Conference of the States Parties] of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

“(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article [...] [Conference of the States Parties], paragraphs 5 and 6, of this Convention; and

“(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.”

Notes by the Secretariat

2. At its sixth session, the Ad Hoc Committee provisionally approved article 77 of the draft convention (see A/AC.261/22, para. 22).

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last

amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 64
Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.
2. The secretariat shall:
 - (a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;
 - (b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and
 - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII

Final provisions

Notes by the Secretariat

1. At the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001), Austria and the Netherlands proposed that chapter VIII of the draft convention contain articles entitled “Signature and accession”, “Ratification and depositary”, “Entry into force”, “Amendment” and “Denunciation”, but indicated that the text should be completed at a later stage (see A/AC.261/IPM/4).

2. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), 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 chapter VIII 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.

3. The initial title of chapter VIII of the draft convention read “Final clauses”. At the seventh session of the Ad Hoc Committee (Vienna, 29 September-1 October 2003), the title was changed to read “Final provisions”, in order to make it consistent with the title of chapter I (General provisions) (see the report of the consistency group established by the Ad Hoc Committee to ensure, inter alia, consistency within the text of the draft convention, as contained in document A/AC.261/24 and Corr.1, para. 11).

Article 65. Implementation of the Convention

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 68¹

“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.

“2. The offences established in accordance with articles [...] [articles on criminalization] of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of the United Nations Convention against Transnational Organized Crime, except to the extent that article 5 of that Convention would require the involvement of an organized criminal group.

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

¹ The first paragraph contains consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). Paragraphs 2 and 3 contain text taken from the proposal submitted by Colombia.

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 78²

“Implementation of the Convention

“Option 1

“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.

“2. The offences established in accordance with articles [...] [articles on criminalization] of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of the United Nations Convention against Transnational Organized Crime, except to the extent that article 5 of that Convention would require the involvement of an organized criminal group.

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

“Option 2³

“1. States Parties shall take the necessary measures, including legislative and administrative measures, in accordance with the principles of their domestic law, with a view to the convergence of domestic legislation,⁴ in order to ensure the implementation of the obligations established in this Convention.

“2. States Parties may adopt more strict or more severe measures than those provided for by this Convention for preventing and combating corruption.”⁵

Austria and the Netherlands (A/AC.261/L.69)

“Article 70

“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

² This article was moved from chapter VII of the earlier rolling text of the draft convention (A/AC.261/3 (Part IV)), to become the first article of chapter VIII (Final clauses), 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.

³ Proposal submitted by Colombia at the second session of the Ad Hoc Committee (A/AC.261/L.85), as amended following the first reading of the draft text. Some delegations pointed out that the Ad Hoc Committee should also keep in mind the proposal on this article submitted by Austria and the Netherlands (A/AC.261/L.69).

⁴ Many delegations considered this phrase redundant. Those delegations also pointed out that if the phrase were eliminated, the proposed text would be virtually identical to the proposal submitted by Austria and the Netherlands and to the text of the Organized Crime Convention, for which those delegations expressed a strong preference.

⁵ India proposed that this paragraph read as follows:

“2. States Parties may adopt legislative or administrative measures which would be more stringent than those provided for in this Convention, for preventing and combating the offences covered by this Convention and for sanctions against the offenders concerned.”

domestic law, to ensure the implementation of its obligations under this Convention.

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

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 78

“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.

“2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.”⁶

Seventh session: Vienna, 29 September-1 October 2003

Notes by the Secretariat

At its seventh session, the Ad Hoc Committee considered article 78 of the draft Convention, including a note for the *travaux préparatoires* proposed at the sixth session by the United States in relation to paragraph 1 of article 78 (A/AC.261/L.250):

“The *travaux préparatoires* will indicate that the term ‘fundamental principles of its domestic law’ includes the principle of federalism. Thus, a federal State may declare at the time of signature, ratification or accession that it assumes and will implement its obligations under chapters II and III of the Convention consistent with the fundamental principles governing the relationship between its central Government and consistent territorial entities.”

At the same session, the Ad Hoc Committee finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

⁶ 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) which reads as follows:

“Each State Party shall provide to the Director of the Centre for International Crime Prevention of the Office on Drugs and Crime of the United Nations Secretariat a copy of each legislative text intended to give effect to this Convention and of any amendment made thereto. The Centre for International Crime Prevention shall enter such texts in a database, which shall be accessible to any interested person through the Internet.”

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

Article 65
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.

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

Article 66. Settlement of disputes

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 70¹

“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.”

Notes by the Secretariat

1. During the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), some delegations expressed their preference for a formulation that would entrust settlement of disputes to the Conference of the Parties to the Convention, whose establishment was proposed in article 76. Some other delegations pointed out that the origin of this provision was the Organized Crime Convention and that, in any event, was a standard formulation. Those delegations

¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

expressed the view that for those reasons the formulation of this article should not be amended.

2. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), there were no comments on this article.

3. At the sixth session of the Ad Hoc Committee, the Office of Legal Affairs of the Secretariat suggested to add, at the end of paragraph 2, the words “provided that States Parties to the dispute have accepted, at the time of signature, ratification, acceptance, approval or accession, the jurisdiction of the International Court of Justice in respect of such disputes”, assuming that such was the intention of the negotiating parties.

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 66
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.

Article 67. Signature, ratification, acceptance, approval and accession

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 71¹

“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.²

“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.³

“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.”

¹ Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). The text referring to regional economic organizations was proposed by Colombia only.

² Proposal of Colombia.

³ The last two sentences of this paragraph were proposed by Colombia.

Notes by the Secretariat

1. 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.

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 67**Signature, ratification, acceptance, approval and accession*

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

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.

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.

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.

C. Interpretative notes

The interpretative note on article 67 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to seventh sessions (A/58/422/Add.1, para. 75) is as follows:

Paragraph 2

“Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competences in respect of matters governed by the Convention and which has been duly authorized, in accordance with internal procedures, to sign, ratify, accept, approve or accede to it; reference to “States Parties” under the Convention shall apply to such organizations within the limits of their competence.

Article 68. Entry into force

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

*“Article 72¹
“Entry into force*

“1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [fortieth]² [...] ³ 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.

“2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [fortieth]² [...] ³ 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.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

*“Article 82
“Entry into force*

“1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth]⁴ [fortieth]⁵ 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.

¹ Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). The text referring to regional economic organizations was proposed by Colombia only.

² Proposed by Colombia.

³ Proposed by Mexico.

⁴ 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.

⁵ 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.”

Notes by the Secretariat

1. During the second reading of the draft text of this article, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003), Japan indicated its intention to submit a proposal regarding paragraph 2 for consideration by the Ad Hoc Committee during the third reading of the draft text.

2. At the fifth session of the Ad Hoc Committee (Vienna, 10-21 March 2003), Japan submitted a proposal to amend paragraph 2 of the article (A/AC.261/L.176) by adding the words “or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is the later.” after the words “relevant instrument”.

3. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 68 Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth 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.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth 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 or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69. Amendment

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 73¹

“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.”

¹Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). The text referring to regional economic organizations was proposed by Colombia only.

Notes by the Secretariat

1. 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.

2. At the sixth session of the Ad Hoc Committee (Vienna, 21 July-8 August 2003), Japan submitted a proposal to amend paragraphs 3 and 4 of this article (A/AC.261/L.230).

3. At the sixth session of the Ad Hoc Committee, the Office of Legal Affairs of the Secretariat proposed to replace the word “file” with the word “transmit” in the second line of paragraph 1 of the article (see document A/AC.261/L.205).

4. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 69
Amendment*

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States 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 States 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 70. Denunciation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

*“Article 74¹
“Denunciation*

“1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

“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.”

Notes by the Secretariat

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

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“Article 84
“Denunciation*

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

¹Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). The text referring to regional economic organizations was proposed by Colombia only.

effective one year after the date of receipt of the notification by the Secretary-General.²

“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.]”

Notes by the Secretariat

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article, as orally amended. The last amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

B. Approved text adopted by the General Assembly (see resolution 58/4, annex)

Article 70 Denunciation

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

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

² 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.”

Article 71. Depositary and languages

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 75¹

“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.”

Notes by the Secretariat

1. 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.

2. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the article (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/58/422, para. 103, draft resolution, annex), that was submitted to the General Assembly for adoption at its fifty-eighth session in accordance with Assembly resolution 56/260.

¹Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

*Article 71
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.

Part Two

Deleted articles

Article 15. Accounting measures to combat the bribing of public officials

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 15¹

“Accounting measures to combat the bribing of public officials

“1. In order to combat effectively the bribing of foreign and international public officials by legal persons subject to their jurisdiction, each State Party shall take such measures as may be necessary to incorporate within its laws and regulations:

“(a) The keeping and maintenance of books and records of accounts;

“(b) The disclosure of financial statements and publication of accounting and auditing standards; and

“(c) The prevention of articles of monetary value or gifts, favours or advantages granted in the commission of the offences set forth in article [...] [Acts of corruption], paragraph 1 (c), of this Convention from being declared tax deductible and prohibition of the establishment of off-the-books accounts, the maintenance of double accounting systems or of inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or of concealing such bribery.²

“2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² At the first session of the Ad Hoc Committee, Mexico proposed to replace subparagraphs (a)-(c) with the following (see A/AC.261/L.34):

“(a) The obligation to keep and maintain books and records of account;

“(b) The obligation to disclose financial statements and to publish accounting and auditing standards; and

“(c) The prevention of articles of monetary value or gifts, favours or advantages granted for the purpose of commission of the offences set forth in article [...] [Acts of corruption], paragraph 1 (c), of this Convention from being tax deductible and prohibition of the establishment of off-the-books accounts, the maintenance of double accounting systems or of inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or of concealing such bribery.”

respect of the books, records, accounts and financial statements of such legal persons.”

Notes by the Secretariat

After the first reading of articles 1-39 of the draft convention, at its first session, the Ad Hoc Committee approved the deletion of article 15.

Article 16. Preventive measures

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

*“Article 16
“Preventive measures*

“Option 1

“For the purposes set forth in article [...] [Statement of purpose] of this Convention, States Parties shall consider the applicability of legislative, administrative or other measures within their own institutional systems to establish, maintain and strengthen:¹

“Option 2

“States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:²

“(a) Integrity and to deter, detect and, where appropriate, sanction or punish corruption by public officials for acts or omissions that affect the legality, honesty, loyalty, impartiality and efficiency incumbent upon them in the exercise of their position, post or commission. Such measures could include career civil service systems, mechanisms for the selection and hiring of public officials, tenure and seniority, fair and clear evaluations, awards and incentives, sanctions and fines, indicators for measuring results and so forth;¹

“(b) The effective intervention of their authorities with a view to deterring, detecting and punishing corruption by public officials, including giving those authorities sufficient independence to dissuade officials from exerting any undue influence in the performance of their duties;¹

“(c) Standards of conduct for the correct, honorable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and to mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions. The standards shall also establish measures and systems requiring public officials to report to competent authorities acts of corruption in the performance of public functions, [as well as

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

systems to promote the autonomy and independence of monitoring bodies.]¹ Such measures should help preserve the public's confidence in the integrity of civil servants and government processes;³

“(d) Codes of ethics and standards of conduct for the correct, honorable and proper performance of activities by individuals. Such standards shall be intended to prevent conflicts of interest, both between individuals and between individuals and public officials. The codes and standards shall also establish measures and systems that promote the reporting of illicit acts and corruption between individuals and in relations between individuals and public officials;¹

“(e) Mechanisms to enforce those standards of conduct;³

“(f) Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;³

“(g) Systems for registering the income, assets and liabilities of persons who perform public functions in [certain]² posts [as]² specified by law and, where appropriate, for making such registration public;³

“(h) Systems of government hiring and procurement of goods and services that ensure the openness, equity and efficiency of such systems.³ [Those systems shall consider restricting, to the greatest extent possible, the conferring of discretionary authority on public officials with respect to the granting of administrative authorizations and resolutions, as well as mechanisms for the strict monitoring of existing discretionary authority;]¹

“(i) Government revenue collection and control systems that deter corruption³ [, as well as mechanisms to provide effective and timely assistance to taxpayers regarding steps and measures to be taken in their dealings with the fiscal authorities;]¹

“(j) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them;¹

“(k) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;³

“(l) Systems for [safeguarding and]¹ protecting public [servants]² officials and other persons [private citizens]² who, in good faith, report acts of corruption, [witnesses, informers and experts who participate in proceedings against individuals who have allegedly committed acts of corruption,]¹ including protection of their identities, in accordance with their constitutions and fundamental principles of their domestic law.³ [Those systems shall also establish the necessary mechanisms for promoting confidence in public officials and for encouraging citizens to report acts of corruption;]¹

“(m) Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating acts of corruption;³

“(n) Deterrents to the bribing of national [domestic]² and foreign public officials, such as mechanisms to ensure that commercial [publicly held]² companies and other types of association maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets and

³ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

have sufficient internal accounting controls to enable their officers to detect acts of corruption;³

“(o) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party;¹

“(p) [Effective]¹ mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption³ [through, for example, the inclusion of civil society in decision-making processes, through monitoring committees, through its involvement in public bidding processes and through free access to information;]¹

“(q) Consideration of the adoption of further preventive measures that take into account the relationship between equitable compensation and probity in public service;³

“(r) The establishment of codes of business ethics to ensure that businessmen undertake to observe the principle of transparency in their actions;³

“(s) The establishment of codes of conduct for public officials;³

“(t) The establishment of career path rules for the merit-based selection, career structure and retirement of officials.”³

Notes by the Secretariat

After the first reading of articles 1-39 of the draft convention, at its first session, the Ad Hoc Committee approved the deletion of article 16.

Article 17. Measures against corruption

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 17¹

“Measures against corruption

“1. In addition to the measures set forth in article [...] [Criminalization of corruption] of this Convention, each State Party shall take the necessary legislative, administrative and other effective measures to the extent possible and in compliance with its own legal system to promote integrity and to prevent, identify, detect and punish acts of corruption.

“2. Each State Party shall take all the necessary measures, including independence for its own public organizations in order for them to take the effective measures mentioned in paragraph 1 of this article and to perform effective local inspection.

“3. Each State Party shall adopt the required regulations to provide transparency in the public assets and service purchases, bidding laws and all public expenditure in order to prevent corruption and shall take the necessary measures in that regard.

“4. In order to prevent corruption, each State Party shall take the legislative and administrative measures necessary for public officials and private persons and legal entities that are parties to public affairs to report to the State on a regular basis the assets and proceeds they have acquired.”

Notes by the Secretariat

After the first reading of articles 1-39 of the draft convention, at its first session, the Ad Hoc Committee approved the deletion of article 17.

¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Article 18. Prevention

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part I))

“Article 18¹

“Prevention

“1. States Parties shall develop and encourage best practices and policies aimed at preventing corruption and shall develop and improve national projects in this regard.

“2. In compliance with the basic principles of their domestic law, States Parties shall seek to reduce current or future opportunities, by means of appropriate legislative, administrative or other measures, for organized criminal groups to enter into legal markets with proceeds of crime. Such preventive measures should focus on:

“(a) Strengthening cooperation between private institutions, including industry and law enforcement agencies or prosecutors;

“(b) Developing standard procedures designed to protect the integrity of public and relevant private institutions, developing codes of conduct for relevant professions, especially lawyers, notaries, financial advisors, auditors and administrators of press and media organizations;

“(c) Prevention of the misuse of tender procedures applied by public authorities and of licences and incentives granted by public authorities for commercial activities by organized criminal groups;

“(d) Prevention of the misuse of legal persons. Such measures may include the following:

“(i) The creation of public records on legal and natural persons who have taken part in the formation, administration and financing of legal persons;

“(ii) The creation of the possibility of preventing persons convicted of crimes covered by this Convention from acting as administrators in companies of other legal persons for a reasonable period of time by a court order or any other suitable procedure;

¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“(iii) The creation of public records of individuals who have been banned from acting as directors of legal persons; and

“(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (ii) of this paragraph.

“3. States Parties shall periodically re-evaluate the existing relevant legal instruments and administrative practices in order to determine any vulnerabilities that may be abused by organized criminal groups.

“4. States Parties shall increase public awareness regarding the existence of and reasons for international corruption and the threat this crime poses. The information will be spread via the mass media where appropriate and shall include measures designed to encourage public participation in the prevention of and the struggle against such crimes.

“5. States Parties shall coordinate among themselves and with the relevant international and regional organizations in the development and encouragement of measures referred to in this article, as appropriate.”

Notes by the Secretariat

After the first reading of articles 1-39 of the draft convention, at its first session, the Ad Hoc Committee approved the deletion of article 18.

Article 26. Use of classified or confidential information

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 26

“Use of classified or confidential information

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper use by a public official or a person who performs public functions, for his or her own benefit or for that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions.

“Option 2²

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The improper disclosure by a public official of confidential information or documents and the use for his or her own benefit or for that of a third party of a scientific discovery or other classified or confidential information or data of which he or she has become aware by virtue of his or her functions;

“(b) The improper use, for his or her own benefit or for that of a third party, by a public official who is an employee or executive or a member of a board or governing body of any public institution of information not intended for public knowledge that he or she has obtained by virtue of or in connection with his or her functions during his or her service as a public official or within two years following separation from such service.”

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

Rolling text (A/AC.261/3/Rev.1)*“Article 26**“Use of classified or confidential information”³**“Option 1”⁴*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper⁵ use by a public official or a person who performs public functions,⁶ for his or her own benefit or for that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions.

“Option 2

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The improper disclosure by a public official of confidential information or documents and the use for his or her own benefit or for that of a third party of a scientific discovery or other classified or confidential information or data of which he or she has become aware by virtue of his or her functions;

“(b) The improper use, for his or her own benefit or for that of a third party, by a public official who is an employee or executive or a member of a board or governing body of any public institution of information not intended for public knowledge that he or she has obtained by virtue of or in connection with his or her functions during his or her service as a public official or within two years following separation from such service.”

Notes by the Secretariat

1. During the second reading of the draft text, at the third session of the Ad Hoc Committee (Vienna, 30 September-11 October 2002), many delegations expressed their wish to delete this article, while stating that 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 engage in consultations 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. Pending the production of that consolidated text, the

³ 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 (Other criminal offences) 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 article 22 (Misappropriation of property by a public official)) and other national penal laws would be sufficient to cover the conduct targeted in this article.

⁴ During the first reading of the draft text, at the first session of the Ad Hoc Committee, some delegations expressed preference for this option as the basis for further work, expressing the view that some elements of option 2, such as the identification of a period of time after separation from service, could be usefully incorporated into a subsequent revised formulation.

⁵ Several delegations were of the view that a more appropriate word was needed.

⁶ One delegation proposed amending this phrase to read “or any other person, as defined in article 3 of this Convention”.

Vice-Chairman proposed to place the existing text in square brackets. Lack of time prevented those delegations from complying with the request of the Vice-Chairman at the third session of the Ad Hoc Committee.

Fifth session: Vienna, 10-21 March 2003

Rolling text (A/AC.261/3/Rev.4)

“*[Article 26⁷*
“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.]”

Notes by the Secretariat

2. At its sixth session (Vienna, 21 July-8 August 2003), the Ad Hoc Committee provisionally approved the deletion of article 26 of the draft convention (see A/AC.261/22, para. 22).

3. During its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the draft convention. In doing so, it endorsed the deletion of article 26.

⁷Revised version of the article submitted by Algeria, Colombia and Mexico at the fifth session of the Ad Hoc Committee. The Ad Hoc Committee did not review the revised text at its fifth session.

Article 29. Other criminal offences

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 29

“Other criminal offences

“Option 1¹

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The violation of disqualification and conflict-of-interest rules for state recruitment as laid down in the internal employment regulations of the State Party;

“(b) The holding of an interest by a public official, to his or her own advantage or to that of a third party, in any type of contract or transaction in which the official is called upon to act by virtue of his or her position or functions;

“(c) The failure by a public official to report to the competent authority facts of which he or she has become aware and which he or she is officially responsible for investigating;

“(d) Unlawful judicial representation, action or advice in a judicial or administrative matter undertaken by a public official;

“(e) The use by a public official who exercises jurisdiction or civil or political authority or holds an executive administrative position or position in a judicial body of the authority or power conferred by public office or functions in favour of or against the electoral chances of a political candidate, party or movement;

“(f) The action taken by a public official of facilitating the escape of a detainee or prisoner entrusted to his or her surveillance, custody or conveyance.

¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“Option 2²

“Each State Party shall take the necessary legislative and other administrative measures to criminalize the following actions, in accordance with basic principles of its domestic law:

“(a) Consciously acting as a mediator for the promising, offering, giving, requesting or accepting of the unlawful benefit listed in articles [...] [articles on criminalization] of this Convention;

“(b) Providing benefit to oneself or others in public works by deceiving a person through tricks and intrigue, or causing harm to that person or to others;

“(c) Providing a credit that shall not be assigned by banks and other financing institutions or stopping a loan that needs to be assigned or to attempt such behaviour consciously;

“(d) Providing benefit for oneself or others by using things that have been entrusted or delivered as a return or to be used temporarily, yet belonging to someone else, in public works.

“Option 3³

“The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

“(a) Disclosure: failure of a public official, either wilfully or through gross negligence, to disclose accurately on an annual basis his or her assets, liabilities and net worth in order to defraud the Government of obligations such as taxes and/or to deceive the proper authorities of his or her unlawful activities and proceeds;

“(b) Divestment: failure of a public official to divest applicable assets to avoid conflicts of interest to a person or persons other than his or her spouse or relatives within the fourth civil degree of consanguinity or affinity.”

² Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

³ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Rolling text (A/AC.261/3/Rev.1)

“[Article 29
“Other criminal offences⁴”

“Option 1

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

“(a) The violation of disqualification and conflict-of-interest rules for state recruitment as laid down in the internal employment regulations of the State Party;

“(b) The holding of an interest by a public official, to his or her own advantage or to that of a third party, in any type of contract or transaction in which the official is called upon to act by virtue of his or her position or functions;

“(c) The failure by a public official to report to the competent authority facts of which he or she has become aware and which he or she is officially responsible for investigating;

“(d) Unlawful judicial representation, action or advice in a judicial or administrative matter undertaken by a public official;

“(e) The use by a public official who exercises jurisdiction or civil or political authority or holds an executive administrative position or position in a judicial body of the authority or power conferred by public office or functions in favour of or against the electoral chances of a political candidate, party or movement;

“(f) The action taken by a public official of facilitating the escape of a detainee or prisoner entrusted to his or her surveillance, custody or conveyance.

“Option 2

“Each State Party shall take the necessary legislative and other administrative measures to criminalize the following actions, in accordance with basic principles of its domestic law:

“(a) Consciously acting as a mediator for the promising, offering, giving, requesting or accepting of the unlawful benefit listed in articles [...] [articles on criminalization] of this Convention;

“(b) Providing benefit to oneself or others in public works by deceiving a person through tricks and intrigue, or causing harm to that person or to others;

“(c) Providing a credit that shall not be assigned by banks and other financing institutions or stopping a loan that needs to be assigned or to attempt such behaviour consciously.

“[Subparagraph (d) was deleted.]”

⁴ At the first session of the Ad Hoc Committee, most delegations proposed the deletion of this article, as all matters it contained had been covered elsewhere. Some delegations were of the opinion that some of the conduct in this article did not merit criminalization. Other delegations suggested that the Ad Hoc Committee should defer its decision on this matter until the completion of the consideration of the articles on criminalization of the convention. The Vice-Chairman with responsibility for this chapter encouraged the authors of the various options to consult with each other in order to produce a single text, eliminating duplication with other articles, and thus to facilitate the work of the Ad Hoc Committee.

“Option 3⁵

“The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

“(a) Non-disclosure: failure of a public official, either wilfully or through gross negligence, to disclose accurately on an annual basis his or her assets, liabilities and net worth in order to defraud the Government of obligations such as taxes and/or to deceive the proper authorities of his or her unlawful activities and proceeds;

“(b) Non-divestment: failure of a public official to divest applicable assets to avoid conflicts of interest to a person or persons other than his or her spouse or relatives within the fourth civil degree of consanguinity or affinity.]”

⁵ At the first session of the Ad Hoc Committee, the Philippines stated that it had submitted its proposal under the title “Other prohibited acts”. The Philippines also revised this option.

Third session: Vienna, 30 September-11 October 2002

Rolling text (A/AC.261/3/Rev.2)

“*[Article 29⁶*
“*Other criminal offences*”⁷

“The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

“(a) *Non-disclosure*: failure of a public official, either wilfully or through gross negligence, to disclose accurately on an annual basis his or her assets, liabilities and net worth in order to defraud the Government of obligations such as taxes and/or to deceive the proper authorities of his or her unlawful activities and proceeds;⁸

⁶ Proposed by the Philippines (A/AC.261/IPM/24).

⁷ During the second reading of the draft text, at the third session of the Ad Hoc Committee, most delegations proposed the deletion of this article, as all matters it contained had been covered elsewhere. Some delegations were of the opinion that some of the conduct covered in this article did not merit criminalization. Also during the second reading of the draft text, Colombia submitted a proposal (contained in A/AC.261/L.94) to amend the text of article 29 and additionally include in the draft convention a new article 28 bis (Criminalization of acts of corruption in State recruitment), as well as a new article 29 bis (Tax offences) as follows:

“*Article 28 bis*
“*Criminalization of acts of corruption in State recruitment*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The violation of disqualification and conflict-of-interest rules for State recruitment as laid down in the internal employment regulations of the State Party;

“(b) The holding of an undue interest by a public official, to his or her own advantage or to that of a third party, in any type of contract or transaction in which the official is called upon to act by virtue of his or her position or functions;

“(c) Failure to observe the relevant legal requirements or to verify their observance in the handling, conclusion or cancellation of a contract by a public official in the performance of his or her functions.

“*Article 29*
“*Other criminal offences*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The failure by a public official to report to the competent authority facts of which he or she has become aware and which he or she is officially responsible for investigating;

“(b) The use by a public official who exercises jurisdiction or civil or political authority or holds an executive administrative position or position in a judicial body of the authority or power conferred by public office or functions in favour of or against the electoral chances of a political candidate, party or movement. Tampering by any means with a public vote, the disruption or obstruction of the normal course of voting or the coercion or threatening of a citizen to ensure that such person votes or does not vote for a particular candidate shall also be established as criminal offences if such acts are committed by a public official;

“(c) The action taken by a public official of facilitating the escape of a detainee or prisoner entrusted to his or her surveillance, custody or conveyance.

“*Article 29 bis*
“*Tax offences*

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The introduction of goods into or their removal from a State to unauthorized locations or their concealment, disguise or withholding from inspection and control by customs authorities. States Parties shall penalize such offences more severely when they are committed by a public official;

“(b) Failure by a public official to carry out legal or regulatory controls for the purposes set out in subparagraph (a) of this article;

“(c) Failure to deposit the sums recovered or retained by States Parties in payment of dues.”

⁸ At the fifth session of the Ad Hoc Committee (Vienna, 10-21 March 2003), Argentina proposed that this paragraph be amended to read as follows (see A/AC.261/L.181):

“(a) Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence the intentional failure, on the part of a public official who is so obliged, to submit a declaration of property interests at the time the applicable law so requires. Accordingly, States Parties shall consider establishing as a criminal offence the omission in such an official’s declaration of interests of relevant data referring to

“(b) *Non-divestment*: failure of a public official to divest applicable assets to avoid conflicts of interest to a person or persons other than his or her spouse or relatives within the fourth civil degree of consanguinity or affinity.]”

Notes by the Secretariat

After the third reading of the draft text, the Ad Hoc Committee approved the deletion of article 29.

his or her property situation, involving the use for that purpose of deception or concealment in respect of those data which, in accordance with the circumstances of the case, should have been declared.”

Article 34. Account offences

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

*“Article 34¹
“Account offences*

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

Notes by the Secretariat

1. During the first reading of the draft text, some delegations raised the issue of the need for sanctions other than criminal sanctions to be included in order to give meaning to the article. Some delegations pointed out the relationship of this article with article 12 (Accounting standards for [the] private sector) and suggested either combining article 34 with that article or deleting article 34. Those concerns were reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee (Vienna, 13-24 January 2003). Some delegations added that the current formulation was overly broad and raised the same concerns as for article 32 (Criminalization of corruption in the private sector). Several delegations proposed to replace the wording “to establish as criminal offences” with the wording “to establish as offences liable to criminal or other sanctions”. The Ad Hoc Committee agreed with the suggestion of the Vice-Chairman guiding the discussion on this article at its fourth session that this article should be considered in conjunction with article 12 at the third reading of the draft text.

2. At the sixth session of the Ad Hoc Committee (Vienna, 21 July-8 August 2003), article 34 was deleted in the light of the final decisions taken regarding article 12 of the draft convention (see under article 12 of the convention).

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Article 41. Progressive development and harmonization of national legislation

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part II))

“Article 41

“Progressive development and harmonization of national legislation

“Option 1¹

“1. Each State Party shall take such measures as may be necessary to ensure that the instrument and the proceeds of the crime derived from the acts referred to in article [...] [Acts of corruption] of this Convention or assets of equal value to such proceeds can be frozen or confiscated or that monetary penalties with similar effect are applied.

“2. States Parties shall endeavour to establish and support auditing mechanisms in order to deter and detect corruption in public administration and impose additional civil or administrative sanctions against any public official who commits acts of corruption. Such sanctions shall include, inter alia, private or public disciplinary measures; private or public reprimand; suspension in position, post or commission; dismissal; economic sanctions; or temporary disqualification from holding positions, posts or commissions in public service.

“3. Each State Party shall establish and support auditing mechanisms in order to deter and detect corruption outside public administration, in particular in the private sector in its relations with the Government, and shall impose additional civil or administrative sanctions against a person subject to sanctions for commission of any act set forth in article [...] [Acts of corruption] of this Convention.

“4. States Parties shall endeavour to ensure that the statute of limitations period applicable to criminal proceedings or sanctions is doubled in cases of a person who, having committed an act of corruption, is outside the jurisdiction of a State Party, if for that reason it is not possible to institute criminal proceedings, conclude a trial or execute a sanction.

¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“5. This Convention shall also apply, by mutual agreement between two or more States Parties, to any other acts of corruption that are not set forth in it.

“6. For the purposes indicated in articles [...] [Acts of corruption] and [...] [Criminalization of the laundering of proceeds of crime] of this Convention, the fact that the property obtained or derived from an act of corruption has been intended for political purposes or the claim that an act of corruption has been committed for political reasons or aims shall not in themselves be sufficient ground for considering such an act a political offence or an ordinary offence related to a political offence.

“Option 2²

“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 covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.”

Notes by the Secretariat

Article 41 was deleted. It should be noted that during the first reading of the draft text, at the second session of the Ad Hoc Committee (Vienna, 17-28 June 2002), Colombia and Mexico withdrew their proposals for article 41. Mexico did so on the understanding that paragraph 4 would be moved to article 40 (Prosecution, adjudication and sanctions), paragraph 5 would be moved to an appropriate article under chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 14 bis of article 51 (Extradition). The delegation of Egypt proposed a new version of article 41 (A/AC.261/L.49). However, in view of the withdrawal of the proposals of Colombia and Mexico and the subsequent deletion of the article, Egypt indicated that it would not insist on its proposals unless the Ad Hoc Committee reverted to the matter at a later stage.

² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

Article 57. Other cooperation measures

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part III))

“Article 57¹

“Other cooperation measures

“1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

“(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

“(b) To exchange information with other States Parties in connection with ongoing investigations of crimes of corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions and officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

“(c) To cooperate with other States Parties in the conduct of investigations relating to the identity, whereabouts and activities of persons involved in crimes of corruption and in the tracing of third parties involved;

“(d) To coordinate the judicial, administrative and other measures necessary for the prompt detection, investigation and punishment of crimes of corruption and related offences;

“(e) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

¹ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

“2. In order to facilitate and improve the efficiency of the measures and mechanisms referred to in paragraph 1 of this article, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

“3. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

“4. States Parties shall cooperate with one another in implementing appropriate and effective measures in order that their banking and financial system can prevent acts of corruption and related offences by, *inter alia*, recording transactions in a transparent manner; identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; and facilitating the detection and subsequent freezing of assets.

“5. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

“6. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

“7. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, *inter alia*, adopting transparent auditing and public procurement regulations and procedures.

“8. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral agreements or arrangements on direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

“9. In coordination with the Office for Drug Control and Crime Prevention, States Parties shall cooperate in maintaining a database that includes evaluations and national plans for combating corruption, with a view to establishing a guide to best practices that may help in promoting cooperation among them.

“10. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention.”

Second session: Vienna, 17-28 June 2002

Rolling text (A/AC.261/3/Rev.1/Add.1)

“Article 57²

“Other cooperation measures

“1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

“[Former subparagraph (a) appears as option 2 of paragraph 1 (a) of article 55.]

“(a) To exchange information with other States Parties in connection with ongoing investigations of crimes, corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions, officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

“[Former subparagraphs (c) and (d) were deleted.]

“(b) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

“2. In order to facilitate and improve the efficiency of the measures and mechanisms referred to in paragraph 1 of this article, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

“3. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

² Revised text submitted by Peru following the first reading of the draft text, at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (A/AC.261/L.77).

“[Former paragraph 4 was moved to article 5
[Preventive anti-corruption policies], where it appears as paragraph 4 bis.]

“4. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

“5. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

“6. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, inter alia, adopting transparent auditing and public procurement regulations and procedures.

“[Former paragraph 8 appears as option 2 of paragraph 2 of article 55.]

“[Former paragraph 9 was moved to article 5
[Preventive anti-corruption policies], where it appears as paragraph 5 bis.]

“7. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention.”³

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

“Article 57⁴

“Other cooperation measures

“1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing corruption. In particular, each State Party may adopt effective measures and mechanisms:

“(a) To exchange information with other States Parties about institutions, officials and other persons concerned with the fight against corruption, which may be distributed and circulated to States so requesting;

“(b) To compile and share analytical experiences in the fight against corruption at the bilateral level and through subregional, regional and international organizations and agencies.⁵

³ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that the wording of this paragraph should not be obligatory.

⁴ This revised text was submitted by Peru at the fourth session at the request of the Vice-Chairman with responsibility for this chapter of the draft convention, following the second reading of the draft text. The Ad Hoc Committee did not review the revised text after its distribution.

“2. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and, whenever possible, with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

“3. States Parties shall cooperate with one another, in accordance with their domestic law, for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability, where appropriate, in cases of offences covered by this Convention.

“4. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and fighting corruption, where appropriate, in promoting ethics and transparency in public administration.

“5. States Parties shall endeavour to support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially those aimed at developing countries, with a view to implementing this Convention.”

Notes by the Secretariat

After the third reading of the draft text, the Ad Hoc Committee approved the deletion of article 57.

⁵ Some delegations indicated that paragraph 1 could be moved to article 73 (Collection, exchange and analysis of information on the nature of corruption).

Article 76 bis. Subsidiary [Technical] body/ Reporting and evaluation

A. Negotiation texts

Fourth session: Vienna, 13-24 January 2003

Rolling text (A/AC.261/3/Rev.3)

*“Article 76 bis
“Subsidiary body¹ [Technical body]²”*

“Option 1

“1. States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.³”

“Option 2

“1. The Conference of the Parties to the Convention shall establish any subsidiary body it deems necessary for the effective implementation of the Convention.⁴”

“Option 3

“1. The Conference of the Parties to the Convention shall have, as subsidiary bodies, two committees, one for evaluation and the other for cooperation and technical assistance, whose functions shall be established at the first meeting of the Conference of the Parties.⁵”

“Option 4

“1. For the purpose of article [...] [Conference of the Parties to the Convention], paragraphs 4 (c) and (e), of this Convention, the Conference of the Parties shall establish a subsidiary body that shall carry out the functions hereinafter provided.¹”

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

² Text taken from the proposal submitted by Chile (A/AC.261/L.157).

³ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001), in which the original title proposed was “Review of the implementation of the Convention”.

⁴ Text taken from the proposal submitted by Egypt (A/AC.261/L.87).

⁵ Text taken from the proposal submitted by Peru (A/AC.261/L.83).

“Option 5

“1. States Parties shall establish a technical body authorized to review the effective implementation of this Convention in accordance with the principles of the United Nations and based, in particular, on respect for the principle of the equality of rights and self-determination of peoples.²

“2. The subsidiary body shall consist of ten experts who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which could impair their impartiality in the exercise of their functions. The members of the subsidiary body shall be elected by States Parties from among their nationals and shall serve in their personal capacity. The composition of the subsidiary body shall reflect equitable geographical distribution, as well as the principal legal systems.¹

“3. The members of the subsidiary body shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.¹

“4. The initial election to the subsidiary body shall be held at the first meeting of the Conference of the Parties. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating those States Parties which have nominated them, and shall submit it to the States Parties to this Convention.¹

“5. The elections to the subsidiary body shall be held at the meetings of the Conference of the Parties. At those meetings, two thirds of the States Parties shall constitute a quorum. The persons elected to the subsidiary body shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.¹

“6. The members of the subsidiary body shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of those five members shall be chosen by lot by the Chairman of the meeting.¹

“7. If a member of the subsidiary body dies or resigns or declares that, for any other cause, he or she can no longer perform the duties of the subsidiary body, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the subsidiary body.¹

“8. The subsidiary body shall establish its own rules of procedure.¹

“9. The meetings of the subsidiary body shall normally be held at the headquarters of the United Nations Office on Drugs and Crime or at any other convenient place determined by the subsidiary body. The subsidiary body shall normally meet annually. The duration of the meetings of the subsidiary body shall be determined and reviewed, if necessary, by a meeting of the Conference of the Parties, subject to the approval of the General Assembly.¹

“10. With the approval of the General Assembly, the members of the subsidiary body established under this Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.”¹

“Article 76 ter

“[Reports from States concerning the implementation of the Convention]”¹

“[Evaluation of the implementation of the Convention by States Parties]”⁶

“1. States Parties undertake to submit to the subsidiary body, through the Secretary-General of the United Nations, reports containing information on their programmes, plans and practices, as well as legislative and administrative measures to implement this Convention.¹

“2. The first report shall be submitted to the subsidiary body within two years of the entry into force of the Convention for the State Party concerned. Thereafter reports shall be submitted every five years.¹

“3. States Parties that have submitted a comprehensive initial report to the subsidiary body need not, in their subsequent reports submitted in accordance with paragraph 2 of this article, repeat basic information previously provided.¹

“4. States Parties that have submitted a report to a regional or subregional organization containing the information referred to in paragraph 1 of this article may use elements of that report for the report they undertake to submit to the subsidiary body.¹

“5. The subsidiary body shall accept observations submitted to it by civil society organizations and may take into consideration such observations.^{1, 2}

“6. The subsidiary body may request from States Parties further information relevant to the implementation of the Convention.¹

“7. The activity of the technical body shall be directed towards supporting the decisions of the Conference of the Parties to the Convention and furnishing information of value in the accomplishment of the latter’s mission.”²

*Organization of the evaluation process*⁶

“8. The evaluation process shall be carried out regionally, in Africa, America, Asia, Europe and Oceania.⁶

“9. The States Parties of each region shall appoint a bureau, which shall assist the subsidiary body of the Conference of States Parties in the evaluation process.⁶

“10. Each State Party shall appoint a delegation, consisting of not more than two persons, to the bureau of its region.⁶

“11. The [subsidiary body of the] Conference of States Parties shall determine appropriate guidelines for the work of the bureaux, including the number of sessions to be held each year.⁶

⁶ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

“12. The subsidiary body of the Conference of States Parties shall coordinate the work of the five bureaux and ensure that procedures and the level of monitoring are uniform in the different regions. The subsidiary body of the Conference of States Parties shall always be present and participate in the evaluation of a State Party by each bureau.⁶

“13. The evaluation of a State Party shall be led by two representatives of two other States Parties, in addition to the representative of the subsidiary body of the Conference of States Parties and at least two representatives of the respective regional bureau.⁶

“14. The representatives shall, during their visit to a State Party for the purpose of performing an evaluation, enjoy privileges and immunities as diplomatic staff in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961.⁶

“15. The evaluation process shall be divided into two phases.⁶

“16. To the extent possible and appropriate, reports made by other international and extensive monitoring mechanisms shall be utilized in the evaluation process in order to avoid any unnecessary duplication of effort.⁶

Phase 1 of the evaluation process⁶

“17. The first phase of the evaluation process shall have as its primary objective to evaluate whether the legal texts through which the States Parties implement the Convention fulfil the requirements of the Convention.⁶

“18. The subsidiary body of the Conference of States Parties shall produce a questionnaire for the purpose of gathering information on the implementation of the Convention. The subsidiary body shall also, in cooperation with the regional bureaux, outline a set of procedural rules for the first phase of the evaluation, taking into account the provisions outlined in paragraphs 19 to 21 below.⁶

“19. Each State Party shall reply to the questionnaire in a precise manner and ensure that its reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the degree of compliance of that State Party. The replies should be provided in one of the official languages of the United Nations and shall be circulated to all the participants in the bureau and the subsidiary body of the Conference of States Parties.⁶

“20. The subsidiary body of the Conference of States Parties and the bureau may, if necessary, require the State Party to provide additional information.⁶

“21. The bureau shall, on the basis of the reply, draft a preliminary report of a maximum of six pages in length. This preliminary report shall be the basis for the examination of the State Party. The preliminary report shall, as appropriate, contain both a list of requirements and a list of recommendations.⁶

Phase 2 of the evaluation process⁶

“22. The second phase of the evaluation process shall have as its primary objective to study the structures put in place to enforce the laws implementing the Convention and to assess their application. The phase 2 process may commence, if

necessary, before the phase 1 examinations of all States Parties have been completed.⁶

“23. The subsidiary body of the Conference of States Parties shall, in cooperation with the bureaux, produce a questionnaire for phase 2. The subsidiary body of the Conference of States Parties shall also, in cooperation with the bureaux, outline a set of procedural rules for the second phase of the evaluation, to include terms of reference for on-site visits, taking into account the provisions of paragraphs 24 to 29 below.⁶

“24. The phase 2 questionnaire sent to each State Party shall take account of the results of the evaluation carried out in phase 1 in order to follow up on issues identified in that review. Each State Party shall reply to the questionnaire in a precise manner and ensure that their reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the replies of the State Party. The time limit for the State Party to be examined shall be fixed by the bureau, in consultation with the State concerned.⁶

“25. The replies should be provided in one of the official languages of the United Nations and shall be circulated to all participants in the regional bureau and the subsidiary body of the Conference of States Parties. The subsidiary body of the Conference of States Parties and the regional bureau may, if necessary, require the State Party to provide additional information.⁶

“26. Unless sufficient material is deemed to be available through other international and extensive monitoring mechanisms, the bureau shall make on-site visits to the States Parties. The duration of each visit should be approximately 3 to 5 days and the visit shall be carried out in accordance with the predetermined terms of reference.⁶

“27. During such visits, participants in the bureau shall meet with such government and other agencies as they deem appropriate. These may include the police, magistrates, tax authorities, ministries, national auditors, civil society representatives and representatives of the private sector.⁶

“28. The State Party shall facilitate such visits.⁶

“29. The bureau shall make a preliminary report based on the information provided both in the questionnaire and during the visit. The bureau shall examine the preliminary report and make a final report after the State Party concerned has provided its comments. The final report shall, as appropriate, consist of both requirements and recommendations.⁶

Summary reports and measures⁶

“30. The provisions of paragraphs 31 to 33 shall pertain equally to both phases of the evaluation process.⁶

“31. The Conference of States Parties shall make a summary report of the evaluations carried out each year and submit the summary report to the General Assembly.⁶

“32. If a State Party does not meet the requirements of the bureau within a time limit determined by the subsidiary body of the Conference of States Parties,

the bureau shall propose appropriate measures to the Conference of States Parties, which shall take a decision on the matter. The measures may be positive, such as targeted technical assistance, or negative, such as suspension of the State Party from the Convention. The State Party may request an extension to the time limit, provided that a reasonable explanation for the request is given.⁶

“33. The subsidiary body of the Conference of States Parties shall establish procedural rules for such measures, taking into account the fair and equal treatment of all States Parties. These procedural rules shall be subject to the approval of the Conference of States Parties.⁶

“34. The subsidiary body shall submit to the Conference of the Parties reports on its activities before each meeting of the Conference. Such reports should, *inter alia*, provide an assessment of each State Party report submitted to it, including recommendations for action to further strengthen the implementation of the Convention.¹

“35. The reports on each State Party and the summary report described in paragraph 31 of this article shall be made available to the public.⁶

“36. States Parties shall make their reports widely available to the public in their own countries.”¹

Fifth session: Vienna, 10-21 March 2003

Notes by the Secretariat

1. At the fifth session of the Ad Hoc Committee (Vienna, 10-21 March 2003), an informal open-ended working group was established by the Vice-Chairman with responsibility for chapter VII of the draft convention and coordinated by Egypt. In its effort to consolidate and streamline the text of article 76 (Conference of the States Parties to the Convention) (see also under article 63 of the convention), the group considered articles 76 bis and 76 ter as well. These two articles were merged into a revised text of article 76 bis on “Reporting and evaluation” (see A/AC.261/L.204 and the rolling text below).

Rolling text (A/AC.261/3/Rev.4)

“[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.⁷”

“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.

“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.⁸”

“5. States Parties that have submitted a comprehensive initial report to the subsidiary body need not, in subsequent reports, repeat basic information provided previously.⁸”

“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.⁹”

“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.⁹”

“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.]”

⁷ The informal working group decided that this paragraph should be moved to article 76, subject to its reformulation. 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.

⁸ 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.

⁹ Norway expressed the wish to have this paragraph moved to article 76. The informal working group did not have time to discuss that proposal.

Notes by the Secretariat

2. At its sixth session (Vienna, 21 July-8 August 2003), the Ad Hoc Committee provisionally approved the deletion of article 76 bis of the draft convention (see A/AC.261/22, para. 22).

3. During its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the draft convention. In doing so, it endorsed the deletion of article 76 bis.

Article 79. Relationship to other agreements and arrangements

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 69

“Option 1¹

“Relationship to other agreements and arrangements

“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.

“...”

¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001). France indicated that the proposed provision was based on article 39 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe of 1990 (United Nations, *Treaty Series*, vol. 1862, No. 31704); paragraph 1 had been slightly amended. France suggested that the aim of the provision was to maintain the commitments undertaken by States in other international instruments.

Second session: Vienna, 17-28 June 2002**Rolling text (A/AC.261/3/Rev.1/Add.1)***“Article 79²**“Relationship to other agreements and arrangements**“Option 1*

“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 2³

“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.

“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.”

Notes by the Secretariat

1. Article 79 remained under consideration throughout the negotiation process without changes in its text and within brackets. At the sixth session of the Ad Hoc

² During the first reading of the draft text, at the second session of the Ad Hoc Committee, 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 Vienna Convention on the Law of Treaties of 1969 (United Nations, *Treaty Series*, vol. 1155, No. 18232). 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.

³ 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).

Committee (Vienna, 21 July-8 August 2003), the Netherlands proposed to add a new paragraph in article 79 to read as follows (see A/AC.261/L.242):

“Nothing in this Convention shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.”

At the same session of the Ad Hoc Committee, the Office of Legal Affairs of the Secretariat submitted observations on article 79, contained in document A/AC.261/L.205.

2. At its sixth session, the Ad Hoc Committee provisionally approved the deletion of the article (see A/AC.261/22, para. 22).

3. In connection with the deletion of article 79, the representative of the Netherlands expressed his wish that the report of the Ad Hoc Committee reflect his statement to the effect that the future convention should not affect the rights and undertakings derived from international covenants on human rights (see A/AC.261/22, para. 23).

4. During its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the draft convention. In doing so, it endorsed the deletion of article 79.

Article 79 bis. Relationship between the United Nations Convention against Corruption and its protocols

A. Negotiation texts

First session: Vienna, 21 January-1 February 2002

Rolling text (A/AC.261/3 (Part IV))

“Article 69

“...

“Option 1¹

“Relations with other treaties and protocols

“1. The present Convention repeals all preceding provisions relating to acts of corruption in all bilateral treaties existing between two States Parties.

“2. This Convention may be supplemented by one or more protocols.

“3. 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.

“4. 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.

“5. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.”

¹ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24) at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption (Buenos Aires, 4-7 December 2001).

Second session: Vienna, 17-28 June 2002***Rolling text (A/AC.261/3/Rev.1/Add.1)****“Article 79 bis²**“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.”

Notes by the Secretariat

Article 79 bis remained under consideration throughout the negotiation process without changes in its text and within brackets. At its seventh session (Vienna, 29 September-1 October 2003), the Ad Hoc Committee considered, finalized and approved the draft convention. In doing so, it approved the deletion of article 79 bis.

² 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 (see above) and was withdrawn during the first reading of the draft text, contained text identical to that of this proposal.

Part Three

Text of General Assembly resolution 58/4

General Assembly resolution 58/4 of 31 October 2003

A. Negotiation texts

Sixth session: Vienna, 21 July-8 August 2003

Draft resolution submitted by the Chairman (A/AC.261/L.233)

“United Nations Convention against Corruption

“The General Assembly,

“Recalling its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption, and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

“Recalling also its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

“Recalling further its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

“Recalling its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention, and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

“Recalling also Economic and Social Council resolution 2001/13 of 24 July 2001, entitled ‘Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds’,

“*Expressing* its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires in December 2001,

“*Mindful* of the Monterrey Consensus, adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002, in which it was underlined that fighting corruption at all levels was a priority,

“*Mindful also* of the Johannesburg Declaration on Sustainable Development, adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002, in particular its paragraph 19, in which corruption was declared a threat to the sustainable development of people,

“*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,

“1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

“2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Mérida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

“3. *Urges* all States to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

“4. *Decides* that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article [...] of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

“5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention in order to prepare the draft text of the rules of procedure for the Conference of the Parties and of other rules described in article [...] of the Convention, which will be submitted to the Conference of the Parties at its first session for consideration and action;

“6. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the Parties to the Convention;

“7. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against Corruption and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above.”

Seventh session: Vienna, 29 September-1 October 2003

Netherlands (A/AC.261/L.252)

It was proposed to add the following operative paragraphs to the draft resolution entitled “United Nations Convention against Corruption” (A/AC.261/L.233):

“*Urges* States to promote the integrity of officials of public international organizations by, inter alia, taking measures with respect to such officials that are of the same order as those measures to which States have committed themselves to take with respect to their own public officials, taking into account the issues of privileges and immunities, as well as jurisdiction;

“*Requests* the Conference of the Parties to the Convention to address this issue by, inter alia, making recommendations on appropriate provisions in this regard;”

Japan (A/AC.261/L.253)

It was proposed to replace the operative paragraphs proposed by the Netherlands (see document A/AC.261/L.252) with the following:

“*Recognizes* the importance of tackling the issue of bribery of officials of public international organizations, including the United Nations, as a common task of the States Parties;

“*Requests* the Conference of the Parties to the Convention to address this issue, taking into account questions of privileges and immunities, as well as of jurisdiction, by, inter alia, making recommendations regarding appropriate provisions in that regard;”

Brazil (A/AC.261/L.255)

It was proposed to add the following operative paragraph to the draft resolution entitled “United Nations Convention against Corruption” contained in document A/AC.261/L.233:

“*Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;”

Notes by the Secretariat

At its seventh session, the Ad Hoc Committee approved the draft resolution, as orally amended, on the understanding that the text of the draft resolution would be finalized and submitted to the General Assembly for consideration and action at its fifty-eighth session (see A/AC.261/25, para. 33).

**B. Approved text adopted by the General Assembly
(see resolution 58/4, annex)**

The General Assembly,

Recalling its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

Recalling also its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

Recalling further its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

Recalling its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

Recalling also Economic and Social Council resolution 2001/13 of 24 July 2001, entitled “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds”,

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires from 4 to 7 December 2001,

Recalling the Monterrey Consensus,¹ adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002,¹ in which it was underlined that fighting corruption at all levels was a priority,

Recalling also the Johannesburg Declaration on Sustainable Development, adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002,² in particular paragraph 19 thereof, in which corruption was declared a threat to the sustainable development of people,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption,³ which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the final text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Merida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

3. *Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

4. *Decides* that, until the Conference of the States Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article 62 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the States Parties to the Convention in order to prepare the draft text of the rules of procedure of the Conference of the States Parties and of other rules described in article 63 of the Convention, which will be submitted to the Conference of the States Parties at its first session for consideration;

¹ *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

² *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

³ A/58/422 and Add.1.

6. *Requests* the Conference of the States Parties to the Convention to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard;

7. *Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;

8. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the States Parties to the Convention;

9. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against Corruption and to discharge the functions of secretariat of the Conference of the States Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above;

10. *Further requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Merida, Mexico, in accordance with resolution 57/169, for submission to the General Assembly at its fifty-ninth session.