

รายการอ้างอิง

ภาษาไทย

- คณะกรรมการป้องกันและปราบปรามการทุจริตแห่งชาติ. การมีส่วนร่วมของ ป.ป.ช.ในการป้องกันการทุจริต. กรุงเทพมหานคร : สำนักงาน ป.ป.ช., 2544.
- ชาลินี ถนัดงาน. สัมฤทธิ์ผลในการปราบปรามการทุจริตและประพฤติมิชอบในวงราชการ ในกรณีร้ายแรงผิดปกติกกับการนำเอากฎหมายป้องกันและปราบปรามการฟอกเงินมาใช้บังคับ. วิทยานิพนธ์ปริญญาามหาบัณฑิต สาขานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2541.
- ธนาคารแห่งประเทศไทย. ธนาคารแห่งประเทศไทย. กรุงเทพมหานคร : ศิวพร, 2513.
- ปกป้อง ศรีสนิท. ความรับผิดชอบของผู้บริหารบริษัทมหาชนจำกัด. วิทยานิพนธ์ปริญญาามหาบัณฑิต สาขานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2544.
- ผาสุก พงษ์ไพจิตร. ข้อเสนอแนะด้านแนวทางต่อต้านการคอร์รัปชันของคณะกรรมการป้องกันและปราบปรามการทุจริตแห่งชาติ วิเคราะห์จากประสบการณ์ประเทศต่างๆ. กรุงเทพมหานคร : สำนักงาน ป.ป.ช., 2541.
- ผาสุก พงษ์ไพจิตรและคณะ. ธุรกิจ รัฐและคอร์รัปชัน. กรุงเทพมหานคร : สำนักงาน ป.ป.ช., 2545. (เอกสารไม่ตีพิมพ์)
- พิเศษ เสตเสถียร. หลักกฎหมายบริษัทมหาชน จำกัด. กรุงเทพมหานคร : นิติธรรม, 2539.
- พุทธทรัพย์ มณีศรี. ประเทศไทยใสสะอาด. วารสารข้าราชการ 45 (พฤศจิกายน-ธันวาคม 2543) : 73.
- มานิตย์ จุมปา. คำอธิบายพระราชบัญญัติว่าด้วยความผิดเกี่ยวกับการเสนอราคาต่อหน่วยงานของรัฐ พ.ศ.2542. กรุงเทพมหานคร : วิทยุชน, 2544.
- สมใจ เกษรศิริเจริญ. การสืบสวนสอบสวนของ ป.ป.ป. กรณีทุจริตและประพฤติมิชอบในวงราชการ. วิทยานิพนธ์ปริญญาามหาบัณฑิต สาขานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2531.
- ลักกรินทร์ นิยมศิลป์และนวนลน้อย ตริรัตน์. ธุรกิจโทรคมนาคมและการให้สัมปทานโครงการของภาครัฐ. กรุงเทพมหานคร : สำนักงาน ป.ป.ช., 2541. (เอกสารไม่ตีพิมพ์)
- สำนักงานคณะกรรมการป้องกันและปราบปรามการทุจริตแห่งชาติ. ระบบการตรวจสอบการทุจริตในสถาบันการเงิน. กรุงเทพมหานคร : สำนักงาน ป.ป.ช., 2545.

แสง บุญเฉลิมวิภาส. การบังคับใช้กฎหมายเพื่อปราบปรามการทุจริตและประพฤติมิชอบใน
ประเทศไทย. วิทยสาร 1 (กรกฎาคม 2544) : 8.

อรพินท์ สพิชคชัย. รัฐธรรมนูญและกลไกใหม่เพื่อสังคมโปร่งใสด้านภัยทุจริต. กรุงเทพมหานคร :
สถาบันวิจัยเพื่อการพัฒนาประเทศไทย, 2543.

อุทิศ บัวศรี. เจ้าพนักงาน ป.ป.ช. 7. สัมภาษณ์, 26 มีนาคม 2546.

เอื้อวงศ์ วงศ์ทองเหลือ. ผู้อำนวยการสำนักคดี สำนักงาน ป.ป.ช.. สัมภาษณ์, 26 มีนาคม 2546.

ภาษาอังกฤษ

Prevention of Bribery Ordinance 1997 (Hong Kong), Section 4 , 9.

Prevention of Corruption Act 1961 (Malaysia), Section 4.

Revised draft United Nations Convention against Corruption.



ศูนย์วิจัยทรัพยากรฯ
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก

ศูนย์วิจัยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก.

Section of Enactment

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE

Section: 4 Heading: Bribery Version Date: 30/06/1997

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (Amended 28 of 1980 s. 3)

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (Amended 28 of 1980 s. 3)

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3)

(4) For the purposes of subsection (3) permission shall be in writing and-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)

Section of Enactment

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE

Section: 9 Heading: **Corrupt transactions with agents**

Version Date: 30/06/1997

(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document-

(a) in respect of which the principal is interested; and

(b) which contains any statement which is false or erroneous or defective in any material particular; and

(c) which to his knowledge is intended to mislead the principal, shall be guilty of an offence.

(4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2). (Replaced 28 of 1980 s. 4)

(5) For the purposes of subsection (4) permission shall-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 4)

ภาคผนวก ข.

Prevention of Corruption Act 1981

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

OFFENCES AND PENALTIES

3. Punishment of corruption.
4. Punishment of corrupt transactions with agents.
5. Increase of maximum penalty in certain cases.
6. Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc.
7. Corruptly procuring withdrawal of tenders.
8. Bribery of member of legislature.
9. Bribery of member of public body.
10. Obstruction of search.
11. Abetment of commission of offence outside Malaysia.
12. Duty of public officer to whom a gratification is given or offered.
13. When penalty to be imposed in addition to other punishment.

PART III

EVIDENCE

14. Presumption of corruption in certain cases.
15. Admissibility of statements to police officers.
16. Evidence of custom inadmissible.
17. Evidence of pecuniary resources or property.
18. Evidence of accomplice.
19. Examination of offenders.
20. Protection of informers.

PART IV

POWERS OF POLICE

21. Powers of search and seizure.
22. Legal obligation to give information.

PART V

PROVISIONS RELATING TO THE PUBLIC PROSECUTOR

23. Special powers of investigation.
24. Public Prosecutor's powers to order inspection of bankers, books.
25. Public Prosecutor's powers to obtain information.
26. Prosecution of offences.

PART VI

MISCELLANEOUS

27. Liability of citizens for offences outside Malaysia.
28. Trial of offences.
29. Offences to be seizable.
30. Principal may recover amount of secret gift.

PART I
PRELIMINARY

1. Short title.

This Act may be cited as the Prevention of Corruption Act, 196 1.

2. Interpretation.

In this Act, unless the context otherwise requires-

"agent" means any person employed by or acting for another, and includes a trustee, administrator and executor, and a person serving under any public body, and for the purposes of section 14 includes a sub-contractor and any person employed by or acting for such sub-contractor;

"gratification" includes-

(a) money or any gift, loan, fee, reward, valuable security or other property or interest in property of any description, whether movable or immovable;

(b) any office, dignity, employment, contract or services, and any agreement to give employment or render services in any capacity;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;

(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;

(e) any forbearance to demand any money or money's worth or valuable thing;

(f) any aid, vote, consent or influence, or pretended aid, vote, consent or influence, and any promise or procurement of, or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward, consideration or gratification within the meaning of this paragraph;

(g) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(h) any offer, undertaking or promise of any gratification within the meaning of paragraphs

(a) to (g);

"offence under this Act" means an offence punishable under section 3, 4, 5, 7, 8 or 9 and includes-

(a) an attempt to commit any such offence;

(b) an abetment of or a criminal conspiracy to commit (as those terms are defined in the Penal Code) any such offence, whether or not the offence is committed in consequence thereof;

"prescribed offence" means an offence punishable under section 161, 162, 163, 164, 165, 213, 214 or 215 of the Penal Code or section 137 of the Customs Act, 1967, and includes -

(a) an attempt to commit any such offence;

(b) an abetment of or a criminal conspiracy to commit (as those terms are defined in the Penal Code) any such offence, whether or not the offence is committed in consequence thereof;

"principal" includes any employer, any beneficiary under a trust, and any trust estate (as though it were a person), any person beneficially interested in the estate of a deceased person, the estate of a deceased person (as though it were a person) and, in the case of any person serving under a public body, the public body;

"public body" includes-

(a) the Government of Malaysia;

(b) the Government of a State;

(c) any department, service or undertaking of the Government of Malaysia or a State;

(d) any corporation, council, board, commissioners or other body which has power to act under and for the purpose of any written law in force in Malaysia or any part thereof relating to local government, public health or undertakings of public utility, or otherwise has power to administer funds belonging to any Government in Malaysia, or money raised by rates, taxes or charges in pursuance of any written law in force in Malaysia or any part thereof;

"public officer" includes any person in the permanent or temporary employment of a public body.

PART II

OFFENCES AND PENALTIES

3. Punishment of corruption.

Any person who shall by himself or by or in conjunction with any other person-

(a) corruptly solicit or receive or agree to receive for himself or for any other person; or

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of-

- (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place;
- (ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

4. Punishment of corrupt transactions with agents.

if-

- (a) any agent corruptly accepts or obtains, or -agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forbome to do, any act in relation to his principal's affairs or business, or for showing or forbearng to show favour or disfavour to any person in relation to his principal's affairs or business;
- (b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forbome to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

5. Increase of maximum penalty in certain cases.

A person convicted of an offence under section 3 or 4 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with any public body, or a sub-contract to execute any work comprised in such a contract, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

6. Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc.

(1) Where in any proceedings against any agent for any offence under section 4 (a) it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity so to do, show or forbear or that he accepted the gratification without intending so to do, show or forbear or that he did not in fact so do, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.

(2) Where in any proceedings against any person for any offence under section 4 (b) it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or reward for doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person having reason to believe or suspect that the agent had the power, right or opportunity so to do, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business he shall be guilty, of an offence under that section notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his principal's affairs or business.

7. Corruptly procuring withdrawal of tenders.

A person-

(a) who, with intent to obtain from any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing the tender; or

(b) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for such contract,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

8. Bribery of member of legislature.

Any person who offers to a member of Parliament or a State Legislative Assembly, or, being a member thereof solicits or accepts, any gratification as an inducement or reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour in his capacity as member, shall, notwithstanding that the member did not have the power, right or opportunity so to do, show or forbear, or that he did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the affairs of Parliament or a State Legislative Assembly, as the case may be, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

9. Bribery of member of public body.

Any person who offers to a member of any public body, or, being a member of any public body solicits or accepts any gratification as an inducement or reward for-

(a) the member voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to the public body;

(b) the member performing, or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;

(c) the member aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

(d) the member showing or forbearing to show any favour or disfavour in his capacity as a member, shall, notwithstanding that the member did not have the power, right or opportunity so to do, show or forbear, or that the inducement or reward was not in relation to the affairs of the public body, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

10. Obstruction of search.

Any person who-

(a) refuses any police officer acting in the execution of his duty under this Act access to any place;

(b) assaults, obstructs, hinders or delays him in effecting any entrance which he is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act;

(c) fails to comply with any lawful demands of a police officer acting in the execution of his duty under this Act; or

(d) refuses or neglects to give any information which may reasonably be required of him and which he has it in his power to give,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

11. Abetment of commission of offence outside Malaysia.

Whoever abets, within the meaning of the Penal Code, the commission outside Malaysia of any act in relation to the affairs or business or on behalf of a principal residing in Malaysia, which if committed in Malaysia would be an offence under this Act, shall, whether or not the act is committed in consequence of the abetment, be deemed to have committed that offence and be punishable accordingly.

12. Duty of public officer to whom a gratification is given or offered.

A member of Parliament, a member of a State Legislative Assembly, a member of a public body or a public officer to whom any gratification is corruptly given, promised or offered shall at the earliest possible opportunity thereafter report the gift, promise or offer, together with the name, if known, of the person who gives, promises or offers the gratification to him, to the nearest police officer; and if he fails to do so without reasonable excuse he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

13. When penalty to be imposed in addition to other punishment.

Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within the time and to the body and in the manner specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

PART III
EVIDENCE

14. Presumption of corruption in certain cases.

Where in any proceedings against a person for an offence under section 3 or 4 it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, the gratification shall be deemed to have been paid or given and received corruptly as an inducement or as hereinbefore mentioned, unless the contrary is proved.

15. Admissibility of statements to police officers.

(1) In any trial or inquiry by a court into an offence under this Act or into a prescribed offence any statement by an accused person, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by the person to or in the hearing of any police officer, whether or not interpreted to him by any other police officer or any other person concerned, or not, in the arrest, shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that no such statement shall be admissible or used as aforesaid-

- (a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against that person, proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to

him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or

(b) in the case of a statement made by that person after his arrest, unless the court is satisfied that, before making the statement, a caution was administered to him in the following words or words to the like effect: "It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence".

(2) Notwithstanding anything to the contrary contained in any written law a person accused of any offence referred to in subsection (1) shall not be bound to answer any questions relating to the offence after any such caution as aforesaid has been administered to him.

16. Evidence of custom inadmissible.

In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such gratification as is mentioned in this Act is customary in any profession, trade, vocation or calling.

17. Evidence of pecuniary resources or property.

(1) In any trial or inquiry by a court into an offence under this Act or into a prescribed offence the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by - the court as corroborating the testimony of any witness in the trial or inquiry that the accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that the gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property or to have obtained an accretion thereto where the resources or property are held or the accretion is obtained by any other person who, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe is holding the resources or property or has obtained the accretion in trust for or on behalf of or, as a gift from, the accused person.

18. Evidence of accomplice.

Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 17, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body.

19. Examination of offenders.

(1) Whenever two or more persons are charged with an offence under this Act or with any prescribed offence the court may require one or more of them to give evidence as a witness or witnesses for the prosecution.

(2) Any person referred to in subsection (1) who refuses to be sworn or to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by a Magistrate's Court or Sessions Court, as the case may be.

(3) Every person required to give evidence under subsection (1), who in the opinion of the court makes true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Magistrate or Sessions Court Judge as the case may be, stating that he has made a true and full discovery of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

20. Protection of informers.

(1) Except as hereinafter provided, no complaint as to an offence under this Act or any prescribed offence shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If in any proceeding relating to an offence under this Act or a prescribed offence the court, after full inquiry into the case, is of opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

PART IV

POWERS OF POLICE

21. Powers of search and seizure.

(1) Whenever it appears to any Magistrate upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any place there is any evidence of the commission of an offence under this Act, or of any prescribed offence, he may, by warrant directed to any police officer empower the officer to enter the place, by force if necessary, and there to search for, seize and detain any such evidence.

(2) Whenever it appears to any police officer of or above the rank of Inspector that there is reasonable cause to believe that in any place there is concealed or deposited any evidence of the commission of an offence under this Act, or of any prescribed offence, and the police officer has reasonable grounds for believing that

by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of the place all the powers mentioned in subsection (1) in as full and ample a measure as if he were empowered to do so by warrant issued under the subsection.

22. Legal obligation to give information.

Every person required by a police officer to give any information on any subject which it is the police officer's duty to inquire into under this Act or any prescribed offence and which it is in his power to give, shall be legally bound to give the information.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

PART V
PROVISIONS RELATING TO THE PUBLIC PROSECUTOR

23. Special powers of investigation.

(1) Notwithstanding anything in any other law contained, the Public Prosecutor, if satisfied that there are reasonable grounds for suspecting that an offence under this Act, or any prescribed offence, has been committed by any person, may by order authorize any police officer of or above the rank of Assistant Superintendent named in the order to make an investigation in the matter in such manner or mode as may be specified in the order. The order may authorize the investigation of any bank account, share account or purchase account, expense account or any other account, or any safe deposit box in any bank, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorized.

(2) Any person who fails or refuses to disclose any such information or to produce any such accounts or documents or articles to the person so authorized shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

24. Public Prosecutor's powers to order inspection of bankers' books.

(1) The Public Prosecutor may, if he considers that any evidence of the commission of an offence under this Act, or any prescribed offence, by a person in the service of a public body is likely to be found in any banker's book relating to that person, his wife or child, or to a person reasonably believed by the Public Prosecutor to be an agent or trustee for that person, by order authorize any police officer of or above the rank of Assistant Superintendent named in the order to inspect any such book and the police officer so authorized may, at all reasonable times, enter the bank specified in the order and inspect the books kept therein and may take copies of any relevant entry in any such book.

(2) For the purpose of this section-

"bank" means any bank licensed under the Banking Act, 1973, and includes the Post Office Savings Bank established under any written law relating to Post Office Savings Banks, and any co-operative society registered under any written law relating to co-operative societies;

"banker's books" includes ledgers, day books, cash books, account books and all other books and documents used in the ordinary course of the business of a bank.

25. Public Prosecutor's powers to obtain information.

(1) In the course of any investigation or proceedings into or relating to an offence under this Act, or any prescribed offence, by any person, the Public Prosecutor may, notwithstanding anything in any other written law to the contrary, by written notice-

(a) require any such person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by the person, his agent or trustee, and by the spouse, sons and daughters of the person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

(b) require any such person to furnish a sworn statement in writing of any money or other property sent out of Malaysia by him during the period specified in the notice;

(c) require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by the person where the Public Prosecutor has reasonable grounds to believe that the information can assist the investigation;

(d) require the person in charge of any public body to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his possession or under his control;

(e) require the manager of any bank to give copies of the accounts of the person or of the spouse or a son or daughter of the person at the bank.

(2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of the notice within such time as may be specified therein; and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

26. Prosecution of offences.

(1) A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any person so arrested may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

PART VI
MISCELLANEOUS

27. Liability of citizens for offences outside Malaysia.

The provisions of this Act shall, in relation to citizens, have effect outside as well as within Malaysia; and where an offence under this Act, or any prescribed offence, is committed by any citizen in any place outside Malaysia he may be dealt with in respect of that offence as if it had been committed at any place within Malaysia at which he may be found or to which he may have been brought in consequence of any proceedings for his extradition to Malaysia from any place outside Malaysia:

Provided that any proceedings against any person under this section which would be a bar to subsequent proceedings against the person for the same offence if the offence had been committed in Malaysia shall be a bar to further proceedings against him under the Extradition Ordinance, 1958, in respect of the same offence outside Malaysia.

28. Trial of offences.

Notwithstanding the provisions of any written law to the contrary, a Sessions Court or, in Sabah and Sarawak, the Court of a Magistrate of the First Class, shall have jurisdiction to try any offence under this Act, or any prescribed offence, and to award the full punishment for the offence.

29. Offences to be seizable.

Every offence under this Act and every prescribed offence shall be deemed to be a seizable offence for the purposes of the law for the time being in force relating to criminal procedure.

30. Principal may recover amount of secret gift.

(1) Where any gratification has in contravention of this Act been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of such amount or money value.

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.



General Assembly

Distr.: General
1 March 2002

Original: English

Ad Hoc Committee for the Negotiation of a
Convention against Corruption
Second session
Vienna, 17-28 June 2002
Item 3 of the provisional agenda*
Consideration of the draft United Nations
Convention against Corruption, with particular emphasis
on articles 40-50 and chapters IV-VIII

Revised draft United Nations Convention against
Corruption**

[Preamble was not taken up during the first session of the Ad Hoc Committee]

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,

* A/AC.261/5.

** The present document contains the draft text as revised following the first reading of the draft convention, which the Ad Hoc Committee began at its first session.

¹ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14). On the recommendation of its Chairman, the Ad Hoc Committee at its first session decided that it would consider the preamble at the end of the negotiation process, possibly together with the final clauses of the draft convention.

Convinced 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 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 1977,² the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,³ the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,⁴ the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997,⁵ the Manila Declaration on the Prevention and Control of Transnational Crime, adopted by the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in

² See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

³ See E/1996/99.

⁴ *Official Journal of the European Communities*, C 195, 25 June 1997.

⁵ E.CN.15/1998.6/Add.1, chap. I.

Manila from 23 to 25 March 1998,⁶ the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁷ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999.^{8, 9}

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

[Have agreed as follows:]

I. General provisions

Article 1 Statement of purpose¹⁰

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat more effectively corruption and [criminal] [all other]¹¹ acts related specifically to corruption:

(b) To promote, facilitate and support international¹² cooperation in the fight against corruption, including the return of the proceeds of corruption [to their countries of origin];¹³

[(c) To promote integrity and good governance.]¹⁴

⁶ E/CN.15/1998/6/Add.2, chap. I.

⁷ Council of Europe, *European Treaty Series*, No. 173.

⁸ *Ibid.*, No. 174.

⁹ See General Assembly resolutions 51/59 and 53/176.

¹⁰ This article was revised at the first session of the Ad Hoc Committee. One delegation proposed that this article be entitled "Purposes of the Convention".

¹¹ 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).

¹² 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.

¹³ 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.

¹⁴ 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

Article 2
Definitions [Use of terms]

For the purposes of this Convention:

Option 1¹⁵

(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 2¹⁶

(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;¹⁷

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

(d) "Official of an international organization"¹⁸ shall mean:

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.

¹⁵ 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 is called to the proposals submitted by the Czech Republic (A/AC.261/L.16) and Ukraine (A/AC.261/L.6).

¹⁶ 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 is called to the proposals submitted by Egypt (A/AC.261/L.9) 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.

¹⁷ Pakistan wished to retain the following formulation as an alternative to both options (A/AC.261/3 (Part I), art. 2, option 6, para. (a)):

"(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."

¹⁸ At the first session of the Ad Hoc Committee, Pakistan proposed replacing these words with the words "Official of a public international organization".

- (i) Any official or other contracted employee within the meaning of the status of public officials,¹⁹ 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;²⁰
- (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;²¹
- (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;²²
- (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;²³
- (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

¹⁹ 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".

²⁰ 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.

²¹ Text taken from the proposal submitted by France (A/AC.261.1/PM.10).

²² 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."

²³ Mexico proposed the insertion of the words "including delivery, as appropriate".

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;²⁴

(n) "Public function" shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal]²⁵ person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;²⁶

(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;²⁷

(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

²⁴ 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.

²⁵ Text taken from the proposal submitted by Colombia (A/C.261/IPM/14).

²⁶ Text taken from the proposal submitted by Mexico (A/C.261/IPM/13). 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/C.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."

²⁷ 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.

market or has no clear legal basis and could constitute or be connected with unlawful activities in general;²⁸

- (q) "Legal person";²⁹
- (r) "Preventive measures";²⁹
- (s) "Act of corruption" shall mean [...];²⁵
- (t) "Transfer of assets derived from acts of corruption" shall mean [...];²⁵
- (u) "Repatriation of funds" shall mean [...];²⁵
- (v) "Illicit enrichment" shall mean [...].²⁵

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 specifically to corruption, irrespective of whether they involve public officials or have been committed in the course of business activity.³⁰

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.³¹

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.

²⁴ Proposal submitted by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

²⁹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

³⁰ 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.

³¹ 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.

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.³²

II. Preventive measures³³

[Article 4 bis³⁴

[...]

Each State Party agrees, to the extent appropriate and consistent with its legal system, to consider³⁵ to implement those preventive measures set out in this Convention by legislative, administrative or other appropriate measures.]

Article 5

[National]³⁶ 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 policy³⁷ that [includes the participation of civil society and]³⁸ reflects the principles of rule of law, good governance, integrity, transparency and accountability.³⁹

2. Each State Party shall ensure that the necessary measures are nationally⁴⁰ coordinated, in both planning and implementation.

³² At the first session of the Ad Hoc Committee, the delegation of 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."

³³ A number of delegations noted that a number of the preventive measures proposed (such as articles 5, 6, 11 and 12) 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 these provisions.

³⁴ Proposal submitted by China at the first session of the Ad Hoc Committee (A/AC.261/L.10).

³⁵ 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 phrases "to the extent appropriate" and "to consider".

³⁶ 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.

³⁷ Some delegations proposed the deletion of the remaining text of this paragraph.

³⁸ Proposal submitted by Mexico at the first session of the Ad Hoc Committee.

³⁹ 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).

⁴⁰ 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

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.⁴¹ Such information shall contain the name and address of bodies referred to in article [...] [Anti-corruption bodies] of this Convention.⁴²

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.^{43, 44}

*Article 5 bis^{45, 46}
Anti-corruption bodies*

1. Each State Party shall, in accordance with its domestic legal system, establish bodies such as:

(a) A national anti-corruption⁴⁷ 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.^{48, 49}

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.

⁴¹ Some delegations proposed to replace the words "a national integrity policy" with the words "a national policy on combating corruption".

⁴² Some delegations proposed that this paragraph be moved to article 5 bis, as it contained a provision related to an institution for combating corruption and not to preventive policies.

⁴³ Some delegations proposed the deletion of the last sentence of this paragraph or, alternatively, the inclusion of the phrase "where appropriate" to qualify the sentence.

⁴⁴ Proposal 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.

⁴⁵ Proposal submitted by Austria, France and the Netherlands to replace the previous version of this article (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.

⁴⁶ One delegation suggested the deletion of this article.

⁴⁷ Mexico proposed the deletion of this word.

⁴⁸ Some delegations proposed the deletion of subparagraphs (a)-(c) for being too specific.

⁴⁹ Colombia and Mexico proposed the insertion of an additional subparagraph, reading as follows:

2. States Parties shall⁵⁰ grant the specialized bodies referred to in paragraph 1 of this article independence⁵¹ 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,⁵² 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.

Article 6⁵³
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,⁵⁴ 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);⁵⁵

(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.^{56, 57, 58}

“(d) Superior oversight bodies for the purpose of implementing mechanisms for preventing, detecting, punishing and eradicating corrupt practices.”

⁵⁰ Mexico proposed the insertion of the words “endeavour to”.

⁵¹ Some delegations questioned the meaning of the word “independence”, especially in relation to which authority such independence was envisaged.

⁵² Mexico proposed the replacement of the words “public administration” with the words “public sector”.

⁵³ 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.

⁵⁴ The use of the terms in this article should be re-examined after the second reading of article 2 (Definitions [Use of terms]).

⁵⁵ 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).

⁵⁶ 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 ...”

⁵⁷ Peru proposed that paragraph 1 of this article read as follows (A/AC.261/L.28):

“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.”

⁵⁸ Some delegations were of the view that paragraph 1 was too detailed and could be shortened and formulated in a more general fashion.

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 declaring⁵⁹ the assets or income of persons who perform specifically identified public functions and, where appropriate, to make such declarations public.⁶⁰

Article 7^{61,62}
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 public⁶³ honesty, the proper exercise of responsibilities and the development of integrity of public officials.⁶⁴

2. In particular, each State Party shall agree to apply, within its own institutional⁶⁵ and legal systems, standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to

⁵⁹ Turkey proposed the insertion of the words "on a regular basis" in this paragraph.

⁶⁰ Algeria 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."

⁶¹ Proposal 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.

⁶² Algeria 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."

⁶³ Several delegations suggested the deletion of this word.

⁶⁴ Mexico 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."

⁶⁵ One delegation suggested the replacement of this word with the word "administrative".

prevent conflicts of interest⁶⁶ and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.⁶⁷

3. States Parties shall endeavour⁶⁸ to incorporate into those standards⁶⁹ 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 1996.⁷⁰

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.⁷¹

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.⁷²

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.^{73, 74}

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

⁶⁶ Some delegations suggested that there might be a need to define this term.

⁶⁷ Some delegations proposed the deletion of the second sentence of this paragraph, on the grounds that it was too detailed.

⁶⁸ One delegation suggested the insertion of the words "where appropriate".

⁶⁹ One delegation suggested the insertion of the words "at least" here.

⁷⁰ Most 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.

⁷¹ Some delegations wished this paragraph to be expanded in order to cover business activity. Other delegations suggested that this paragraph be merged with paragraph 5.

⁷² Some 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.

⁷³ Azerbaijan proposed the insertion at the end of this subparagraph of the words "exceeding the limits established by domestic law".

⁷⁴ Mexico 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."

accordance with fundamental principles of their domestic law, disciplinary⁷⁵ measures against public officials who violate those standards.⁷⁶

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.^{77, 78}

Article 8⁷⁹

Public procurement and public financial management

1. Each State Party shall take the necessary steps to establish procurement rules⁸⁰ based on transparency, openness and competition. Such rules shall include, inter alia:⁸¹

- (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;⁸² 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.^{83, 84}

⁷⁵ Some delegations proposed to replace the word "disciplinary" with the word "appropriate" or "relevant".

⁷⁶ Brazil 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."

⁷⁷ At the first session of the Ad Hoc Committee, most delegations proposed the deletion of this paragraph.

⁷⁸ Argentina proposed the inclusion of a new article entitled "Conflicts of interest" after this article.

⁷⁹ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

⁸⁰ 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.

⁸¹ 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.

⁸² 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."

⁸³ 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."

⁸⁴ 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."

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.⁸⁵

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;⁸⁶

(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.⁸⁷

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.⁸⁸

⁸⁵ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

⁸⁶ 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;"

⁸⁷ 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."

⁸⁸ Several delegations suggested that this paragraph should be moved to the chapter on criminalization.

6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations⁸⁹ takes into consideration the consequences of acts of corruption committed by public officials.^{90, 91}

Article 9⁹²
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.⁹³

2. Each State Party shall take the necessary measures to establish appropriate systems for public reporting.⁹⁴ Those systems may include:

- (a) Reporting requirements for government departments and agencies;
- (b) Publication of annual government reports.⁹⁵

⁸⁹ Mexico proposed to replace the words "public administrations" with the words "the public sector".

⁹⁰ Many delegations were of the view that this paragraph required redrafting to make it more precise.

⁹¹ 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.

"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."

⁹² Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

⁹³ Some delegations suggested that this paragraph would require refinement to make it more precise.

⁹⁴ 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.

⁹⁵ 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."

Article 9 bis⁹⁶
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.⁹⁷ Such measures may include:

- (a) Measures⁹⁸ 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.^{99, 100}

⁹⁶ Revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland (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) to (c) were too detailed.

⁹⁷ 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".

⁹⁸ It was suggested that this word should be replaced with the words "rules and procedures" or "measures and procedures".

⁹⁹ 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."

¹⁰⁰ 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."

*Article 10*¹⁰¹
*Funding of political parties*¹⁰²

1. Each State Party shall adopt, maintain and strengthen¹⁰³ measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

- (a) To prevent conflicts of interest;¹⁰⁴
- (b) To preserve the integrity of democratic political structures and processes;
- (c) To proscribe¹⁰⁵ the use of funds acquired through illegal and corrupt practices to finance political parties; and¹⁰⁶
- (d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.¹⁰⁷

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.¹⁰⁸

¹⁰¹ Proposal 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.

¹⁰² One delegation suggested that, if this article were included, it would necessitate a definition of "political party".

¹⁰³ While expressing its preference for deletion, one delegation suggested that an acceptable formulation would be to make this article optional by using the formulation "may adopt, in accordance with fundamental principles of domestic law".

¹⁰⁴ Several delegations called for this concept to be better defined.

¹⁰⁵ Some delegations suggested replacing this word with the word "prohibit" or the words "eliminate the possibility of".

¹⁰⁶ Azerbaijan proposed to amend subparagraphs (a), (b) and (c) to read (A/AC.261/L.37):

"(a) To prevent the exercise of improper, corrupting influence;

"(b) To prevent the violation through corrupt acts of the independence and integrity of democratic and other processes;

"(c) To preclude the use of funds acquired through illegal and corrupt practices to finance political parties; and"

¹⁰⁷ Egypt proposed the addition of the words "and their sources" at the end of this subparagraph.

¹⁰⁸ Argentina proposed the addition of paragraph that would read as follows: "Political parties shall make public the origin and destination of their funds and property, subject to the constitution and fundamental legal principles of each State Party".

*Article 11¹⁰⁹**Private sector*

1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce¹¹⁰ existing or future opportunities for engaging in corruption and criminal acts related specifically to corruption,¹¹¹ involving the private sector through appropriate legislative, administrative or other measures. Those measures should¹¹² focus on:¹¹³

(a) Strengthening cooperation between law enforcement agencies or prosecutors¹¹⁴ and relevant private entities;¹¹⁵

(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;¹¹⁶

(c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound

¹⁰⁹ Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 11 (A/C.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 delegations 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.

¹¹⁰ Some delegations proposed to use the word "curtail" or "eliminate" instead of the word "reduce".

¹¹¹ Some delegations suggested supplementing this sentence with the words "and other offences specifically related to corruption".

¹¹² Some delegations suggested the inclusion of the expression "inter alia" here.

¹¹³ Mexico proposed the following amended text for paragraph 1 (A/C.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."

¹¹⁴ Some delegations proposed the deletion of the reference to prosecutors, as they were considered to be part of law enforcement agencies.

¹¹⁵ 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 United Nations Convention against Transnational Organized Crime, from which this article had been drawn.

¹¹⁶ This indicative list might be further developed in the *travaux préparatoires*. However, several delegations suggested that there was no need to go into detail.

corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions.¹¹⁷

(d) Preventing the misuse of legal persons for committing or concealing acts of corruption by identifying constituents, holders of capital and shares, economic 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 funding¹¹⁸ of legal persons:

(e) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity.¹¹⁹

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 12¹²⁰

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 registered¹²¹ 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.

¹¹⁷ France expressed reservations about this paragraph.

¹¹⁸ 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.

¹¹⁹ Pakistan proposed to add the following text, which was 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.”

¹²⁰ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

¹²¹ Proposal of Mexico.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications referred to in paragraph 1 of this article¹²² in respect of the books, records, accounts and financial statements of such companies.¹²³

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.¹²⁴

¹²² Proposal of 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.

¹²³ Article 8 of the Convention on Combating Bribery of Foreign Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (with slight changes). Some delegations suggested that this paragraph should be moved to the chapter on criminalization.

¹²⁴ Some delegations suggested that paragraphs 3 and 4 were redundant and should be deleted.

ศูนย์วิจัยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Article 13^{125, 126, 127}
*Civil society*¹²⁸

1. Each State Party shall take appropriate measures within its means¹²⁹ 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;¹³⁰
- (b) Optimum¹³¹ access to information for the public;
- (c) Protection of "whistle-blowers"¹³² as set forth in article [...] [Protection of "whistle-blowers" and witnesses] of this Convention; and

¹²⁵ 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.

¹²⁶ 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."

¹²⁷ 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."

¹²⁸ 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".

¹²⁹ Some delegations suggested adding the words "in accordance with fundamental principles of domestic law".

¹³⁰ Several delegations were of the view that this paragraph could be deleted.

¹³¹ Many delegations considered this term too vague and therefore inappropriate for a legal instrument.

¹³² 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.

(d) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.^{133, 134}

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 law¹³⁵ 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.¹³⁶

Article 14¹³⁷

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

¹³³ 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."

¹³⁴ 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 serve as accredited private monitors."

¹³⁵ 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.

¹³⁶ 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."

¹³⁷ 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 United Nations Convention against Transnational Organized Crime (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.

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.]¹³⁸

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.

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.

[Articles 15-18 were deleted.]

¹³⁸ 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.

ศูนย์วิจัยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement¹³⁹

Article 19

Criminalization of corruption involving a public official¹⁴⁰

Option 1¹⁴¹

Each State Party shall adopt¹⁴² such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:¹⁴³

(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:

¹³⁹ South Africa submitted a proposal that was intended to consolidate in a single article a number of criminalization provisions (A/AC.261/L.11). During the discussion at the first session of the Ad Hoc Committee, many delegations expressed the wish to consider this chapter in its present form, without precluding reverting to the approach of the proposal of South Africa after completing such consideration.

¹⁴⁰ 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.

¹⁴¹ 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 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.

¹⁴² 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.

¹⁴³ 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.

(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 2¹⁴⁴

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 advantage¹⁴⁵ 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.

Article 19 bis

*Criminalization of corruption involving a foreign public official*¹⁴⁶

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.¹⁴⁷

¹⁴⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). 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.

¹⁴⁵ 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.

¹⁴⁶ 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.

¹⁴⁷ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). During the first reading of the draft text at the first session of the Ad Hoc Committee, several

2. Intent may reasonably be deduced from the circumstances.¹⁴⁸Option 2¹⁴⁹

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]¹⁵⁰ 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 judicial office or officials of an international court whose jurisdiction is accepted by the State Party.

Option 3¹⁵¹

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 4¹⁵²

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

delegations welcomed the opportunity and stressed the advisability of drawing inspiration from the Organized Crime Convention and striving to find common ground on improved language.

¹⁴⁸ Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

¹⁴⁹ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

¹⁵⁰ 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.

¹⁵¹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). 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 other proposed options, 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).

¹⁵² Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

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.¹⁵³

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.¹⁵⁴

Article 20

*Complicity, instigation or attempt*¹⁵⁵

Option 1¹⁵⁶

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 2¹⁵⁷

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.

¹⁵³ See the Criminal Law Convention on Corruption of the Council of Europe (Council of Europe, *European Treaty Series*, No. 173, the "Criminal Law Convention").

¹⁵⁴ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

¹⁵⁵ 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 this article.

¹⁵⁶ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). During the first reading of the draft text at the first session of the Ad Hoc Committee, several delegations expressed their support for this option, because of its brevity and origin from 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.

¹⁵⁷ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

Option 3¹⁵⁸

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.

Option 4¹⁵⁹

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 5¹⁶⁰

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.

¹⁵⁸ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). 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 this option and in option 4, 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.

¹⁵⁹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

¹⁶⁰ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

Article 21
*Trading in influence*¹⁶¹

Option 1¹⁶²

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;¹⁶³

(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 abuse¹⁶⁴ 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,¹⁶⁵ whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.^{166, 167}

¹⁶¹ 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.

¹⁶² Text taken from the proposal submitted by France (A/C.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.

¹⁶³ One delegation suggested the insertion of the words "or entity" after the words "any other person".

¹⁶⁴ Some delegations suggested the replacement of the word "abuse" with the words "misuse" or "improper use".

¹⁶⁵ One delegation suggested the insertion of the words "or entity" after the words "any other person".

¹⁶⁶ Some delegations suggested deletion of the last part of the sentence. Other delegations advocated its retention, as it contained an important element of the provision.

¹⁶⁷ 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 the present stage, trading in influence (active and passive) for a foreign public authority has not been taken into account.

Option 2¹⁶⁸

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.

Option 3¹⁶⁹

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 4¹⁷⁰

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 5¹⁷¹

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.

¹⁶⁸ Revised text submitted by Mexico at the first session of the Ad Hoc Committee (A/AC.261/L.39).

¹⁶⁹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

¹⁷⁰ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

¹⁷¹ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Article 22
Misappropriation of property by a public official

Option 1¹⁷²

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 2¹⁷³

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 3¹⁷⁴

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 23
*Concealment*¹⁷⁵

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,]¹⁷⁶ possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such

¹⁷² 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, 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 with 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.

¹⁷³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

¹⁷⁴ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

¹⁷⁵ 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.

¹⁷⁶ Pakistan withdrew its previous option 3 of this article, on condition that the word "retention" be added in this draft text.

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.¹⁷⁷

Article 24
Abuse of functions^{178, 179}

Option 1¹⁸⁰

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 2¹⁸¹

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:

¹⁷⁷ 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 for 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."

¹⁷⁸ 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."

¹⁷⁹ 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".

¹⁸⁰ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). 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.

¹⁸¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(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.

Article 25

Unlawful enrichment^{182, 183, 184}

Option 1¹⁸⁵

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.

¹⁸² 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.

¹⁸³ 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."

¹⁸⁴ 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."

¹⁸⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Option 2¹⁸⁶

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 3¹⁸⁷

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 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 4¹⁸⁸

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 his or her other lawful sources of income, in which case such property shall be presumed to have been acquired unlawfully.¹⁸⁹

¹⁸⁶ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

¹⁸⁷ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

¹⁸⁸ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

¹⁸⁹ 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 those 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 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.

Article 26
*Use of classified or confidential information*¹⁹⁰

Option 1¹⁹¹

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper¹⁹² use by a public official or a person who performs public functions,¹⁹³ 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 2¹⁹⁴

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.

¹⁹⁰ During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed their wish to retain the concept contained in this article in the draft convention. Many of them, however, expressed their preference for reflecting that concept in a revised version of article 29 and not in a separate article. Some delegations were of the view that there was no need for the establishment of a separate offence on the issue. According to those delegations, other articles (such as 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.

¹⁹¹ Text taken from the proposal submitted by Mexico (A/C.261/IPM/13). 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.

¹⁹² Several delegations were of the view that a more appropriate word was needed.

¹⁹³ One delegation proposed amending this phrase to read "or any other person, as defined in article 3 of this Convention".

¹⁹⁴ Text taken from the proposal submitted by Colombia (A/C.261/IPM/14).

Article 27
*Diversion of property*¹⁹⁵

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.¹⁹⁶

Article 28
Improper benefits^{197, 198}

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.

[*Article 29*
Other criminal offences]¹⁹⁹

Option 1²⁰⁰

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:

¹⁹⁵ During 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 this article with that article. 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.

¹⁹⁶ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

¹⁹⁷ At the first session of the Ad Hoc Committee, Colombia and the Philippines withdrew previous options 2 and 3, respectively.

¹⁹⁸ During 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.

¹⁹⁹ 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 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.

²⁰⁰ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(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 2²⁰¹

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.]

Option 3²⁰²

The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

²⁰¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

²⁰² Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24). 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.

(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.]

Article 30²⁰³

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.²⁰⁴

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.²⁰⁵

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.²⁰⁶

Article 31²⁰⁷

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 in an organized manner.²⁰⁸

²⁰³ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). 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. However, most delegations suggested that this article could be merged into articles 20 (Complicity, instigation or attempt) and 40 (Prosecution, adjudication and sanctions).

²⁰⁴ Many delegations suggested a reformulation of this paragraph drawing on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development.

²⁰⁵ Many delegations suggested deletion of this paragraph.

²⁰⁶ Some delegations proposed deletion of this paragraph. However, others proposed that this paragraph be reformulated along the lines of paragraph 2 (f) of article 6 of the Organized Crime Convention.

²⁰⁷ 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.

²⁰⁸ Some delegations proposed to replace the words "in an organized manner" with the words "by an organized criminal group".

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.²⁰⁹

Article 32²¹⁰

Criminalization of corruption in the private sector²¹¹

Option 1²¹²

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:²¹³

(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;

(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 breach of his or her duties.

²⁰⁹ 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.

²¹⁰ 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".

²¹¹ During the first reading of the draft text at the first session of the Ad Hoc Committee, one delegation suggested that the title should read "Criminalization of corruption by the private sector".

²¹² Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). At the first session of the Ad Hoc Committee, the authors revised their proposal 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.

²¹³ Pakistan proposed the addition of the words "that affects public interest".

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 2¹⁴

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 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.

Article 33

Criminalization of money-laundering of proceeds of corruption

Option 1¹⁵

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;

²¹⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

²¹⁵ 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).

(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.

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.²¹⁶

Option 2²¹⁷

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;

²¹⁶ 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, instrument.

²¹⁷ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

(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 3²¹⁸

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;

²¹⁸ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(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;

(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 circumstance;

Option 4²¹⁹

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 5²²⁰

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;

²¹⁹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

²²⁰ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

(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 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 6²²¹

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.

²²¹ Text taken from the proposal submitted by Pakistan (A.AC.261:IPM/23).

Article 34²²²
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.

Article 35²²³
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.

Article 36
Measures against corruption

Option 1²²⁴

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 2²²⁵

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.

Option 3²²⁶

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.

²²² Text taken from the proposal submitted by France (A/C.261/IPM/10).

²²³ Text taken from the proposal submitted by Mexico (A/C.261/IPM/13).

²²⁴ Text taken from the proposal submitted by France (A/C.261/IPM/10).

²²⁵ Text taken from the proposal submitted by Colombia (A/C.261/IPM/14).

²²⁶ Text taken from the proposal submitted by Pakistan (A/C.261/IPM/23).

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.

Article 37²²⁷

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.

Article 38

Liability of legal persons

Option 1²²⁸

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.

²²⁷ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

²²⁸ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

Option 2²²⁹

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.

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 3²³⁰

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 4²³¹

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 5²³²

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.

²²⁹ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

²³⁰ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

²³¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

²³² Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

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.

Article 39²³³

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.

[Articles 40-75 were not taken up.]

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

²³³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM.4).

ประวัติผู้เขียนวิทยานิพนธ์

นางสาวณัฐวี ตีมา เกิดวันที่ 21 กันยายน พ.ศ. 2521 สถานที่เกิดจังหวัด
อุดรดิตถ์ สำเร็จการศึกษาปริญญาวิทยาศาสตรบัณฑิต จากจุฬาลงกรณ์มหาวิทยาลัย ในปี
การศึกษา 2542



ศูนย์วิทยพัชร์พยากร
จุฬาลงกรณ์มหาวิทยาลัย