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Consideration of the draft United Nations Convention against Corruption

Draft United Nations Convention against Corruption^{**,**}

Preamble¹

[*The General Assembly*], [*The States Parties to this Convention*],

Concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

* A/AC.261/1.

** The present document is the outcome of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires from 4 to 7 December 2001.

*** The present draft text is a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting. It was prepared at the Informal Preparatory Meeting (preamble and chaps. I-IV) and subsequently by the Secretariat at the request and following the guidance of the Informal Preparatory Meeting (chaps. V-VIII) (see also the report of the Informal Preparatory Meeting (A/AC.261/2)). The preamble and chapters I, General provisions, and II, Preventive measures, appear in the present document (A/AC.261/3 (Part I)); chapter III, Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement, appears in document A/AC.261/3 (Part II). Chapter IV, Promoting and strengthening international cooperation, is contained in document A/AC.261/3 (Part III) and document A/AC.261/3 (Part IV) contains chapters V, Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds, VI, Technical assistance, training and collection, exchange and analysis of information, VII, Mechanisms for monitoring implementation, and VIII, Final clauses.

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).



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

Concerned further that cases of corruption, especially on a large scale, tend to involve vast quantities of funds, which constitute a substantial proportion of the resources of the countries affected, and that their diversion causes great damage to the political stability and economic and social development of those countries,

Convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples,²

Convinced also that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

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

Considering that globalization of the world's economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon,

Bearing in mind that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective,²

Bearing also in mind ethical principles, such as, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard integrity,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in combating corruption and bribery,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States,

Welcoming multilateral initiatives to combat corruption, including, inter alia, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1977,³ the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,⁴ the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the

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

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

⁴ See E/1996/99.

Council of the European Union on 26 May 1997,⁵ the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997,⁶ the Manila Declaration on the Prevention and Control of Transnational Crime, adopted by the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998,⁷ the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁸ and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,^{9, 10}

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

[Have agreed as follows:]

I. General provisions

Article 1

Statement of purpose

Option 1¹¹

The purposes of this Convention are:

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

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

Option 2¹²

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

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

⁶ E/CN.15/1998/6/Add.1, chap. I.

⁷ E/CN.15/1998/6/Add.2, chap. I.

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

⁹ *Ibid.*, No. 174.

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

¹¹ Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Turkey (A/AC.261/IPM/22).

¹² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Article 2
Definitions [Use of terms]

For the purposes of this Convention:

Option 1¹³

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

Option 2¹⁴

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

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

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

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

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

Option 3¹⁵

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

Option 4¹⁶

(a) “Public official”, “government official” or “public servant” shall mean any official or employee of the State or its agencies, including those who have been selected, appointed or elected to perform activities or functions in

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

¹⁴ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

¹⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

¹⁶ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). In its proposal, Colombia offered the following alternative definition of the term “public official”: “‘Public official’ shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.” This alternative is identical to the definition that appears in the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex, the “Organized Crime Convention”, art. 8).

the name of the State or in the service of the State, at any level of its hierarchy;

Option 5¹⁷

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

Option 6¹⁸

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

(b) “Public works” shall refer to the works carried out in each State Party and in its affiliated organizations;¹⁷

(c) “Official” shall mean any person who holds a legislative, administrative or judicial post at any hierarchical level or in any department of government or public administration. By extension, it also applies to any person who performs official functions on a permanent or occasional basis, including persons employed in an enterprise, or any legal person, such as institutions, financial agencies, funds or other public entities;¹⁹

(d) “Official of an international organization” shall mean:²⁰

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

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

(e) “Foreign State” shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;²¹

Option 1²¹

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

¹⁷ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

¹⁸ Text taken from a proposal submitted by Pakistan.

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

²⁰ Text taken from the proposals submitted by France (A/AC.261/IPM/10) and Mexico (A/AC.261/IPM/13).

²¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

Option 2²²

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

Option 1²³

(g) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

Option 2

(g) “Property” shall mean assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate or relating to ownership or other rights pertaining to such assets;²²

(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;²⁴

Option 1²⁵

(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;

Option 2²⁶

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

Option 1²⁵

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

Option 2²⁶

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

²² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

²³ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10) and Turkey (A/AC.261/IPM/22).

²⁴ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10), Mexico (A/AC.261/IPM/13) and Turkey (A/AC.261/IPM/22).

²⁵ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14), France (A/AC.261/IPM/10) and Mexico (A/AC.261/IPM/13).

²⁶ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

(k) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article [...] [Criminalization of the laundering of proceeds of crime] of this Convention;²⁵

(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.²⁷

Option 1²⁸

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

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

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

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

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

For the purposes of this Convention, the term “corruption” shall additionally apply to any of the acts described in subparagraphs [...] and [...] of this article if their objective is to maintain in power—under the same or another name—the group that is exercising governmental authority or to enable that group to gain power within another public or government entity.

Option 2²⁹

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

²⁷ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and France (A/AC.261/IPM/10).

²⁸ Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

²⁹ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

- (i) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value or other benefit in exchange for any act or omission in the performance of his or her public functions;
- (ii) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value or other benefit in exchange for any act or omission in the performance of his or her public functions;
- (iii) Any act or omission in the discharge of his or her duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- (iv) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
- (v) Participation as a principal, co-principal, instigator, accomplice or accessory after the fact or in any other manner in the commission or attempted commission of or in any collaboration or conspiracy to commit any of the above acts;

Option 3³⁰

- (m) “Corruption” includes:
 - (i) Accumulation of wealth by any public official or holder of public office in his or her own name, in the name of his or her spouse, children or any kin or in the name of his or her frontman by exploiting his or her office or official position;
 - (ii) Wrongful gain by misappropriation of public funds;
 - (iii) Amassing wealth by violating the trust reposed in him or her as a public official or holder of public office;
 - (iv) Bribes or commissions in any national or international business transaction;
 - (v) Amassing wealth by malfeasance and misfeasance or any other corrupt practice;
 - (vi) Possession of wealth and assets beyond known sources of income through unassessed income, but shall not include any wealth that, though not disclosed, could be accounted for;
- (n) “Public function” shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal]³¹ person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;³²
- (o) “International organization” shall mean a public, intergovernmental, private or non-governmental organization whose presence and sphere of activity

³⁰ Text taken from a proposal submitted by Pakistan.

³¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

³² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

include two or more States and which is situated in one of the States Parties to this Convention;³²

- (p) “Suspicious transaction” shall mean [...];³¹
- (q) “Legal person”;³³
- (r) “Preventive measures”;³³
- (s) “Act of corruption” shall mean [...];³¹
- (t) “Transfer of assets derived from acts of corruption” shall mean [...];³¹
- (u) “Repatriation of funds” shall mean [...];³¹
- (v) “Illicit enrichment” shall mean [...].³¹

Article 3

Scope of application

Option 1³⁴

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

Option 2³⁵

1. This Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction in accordance with article [...] [Jurisdiction], with the exception of the provisions of articles [...] [Mutual legal assistance], [...] [Collection, exchange and analysis of information on the nature of corruption], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.

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

Article 4³⁶

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.

³³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

³⁴ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Turkey (A/AC.261/IPM/22).

³⁵ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

³⁶ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13) and Turkey (A/AC.261/IPM/22) (art. 4 of the Organized Crime 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.

II. Preventive measures

Article 5³⁷

National integrity strategy and policies

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

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

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

4. Each State Party shall, in accordance with its domestic law, establish bodies suitable to fight corruption, such as:

(a) A national anti-corruption agency to survey the national anti-corruption strategy referred to in paragraph 1 of this article;

(b) A public service commission and ombudsman.

5. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing and implementing a national integrity strategy. Such information shall contain the name and address of bodies referred to in paragraph 4 of this article.

6. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.

Article 5 bis

Specialized prevention structures

1. States Parties shall consider the establishment of specialized bodies to prevent corruption that are capable of developing multidisciplinary methods to increase knowledge about corruption and to classify acts of corruption.

³⁷ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 31, paras. 1, 4, 6 and 7, of the Organized Crime Convention (with slight changes)).

2. States Parties shall grant the specialized bodies referred to in paragraph 1 of this article independence and the material means and specialized staff, as well as the training that such staff may require to perform their functions.³⁸

3. States Parties shall consider establishing or appointing, within their public administration, a contact point or service to which any natural or legal person may apply in order to obtain advice or to report information concerning acts of corruption.³⁹

Article 6
Public administration

1. States Parties shall endeavour to adopt, maintain and strengthen:

(a) Systems of government hiring of public officials that ensure openness, equity and efficiency;

(b) Systems based on objective criteria, for open and merit-based hiring and promotion of public officials;

(c) Systems for thorough screening of public officials for sensitive positions;

(d) Systems establishing adequate salaries and harmonization of payments and facilitating efficient job rotation;

(e) Education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions.⁴⁰

2. States Parties shall take such measures as may be necessary to ensure that public officials and civil servants receive specialized, specific and appropriate training concerning the risks of corruption to which they may be exposed by virtue of their functions and the supervisory missions and investigations for which they are responsible.⁴¹

3. States Parties shall consider, while respecting the basic principles of their domestic law, taking such measures as may be necessary to adopt and implement systems for declaring the income of persons who perform specific public functions and, where appropriate, to make such declarations public.⁴²

³⁸ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

³⁹ Text taken from the proposals submitted by Argentina (A/AC.261/IPM/20) and France (A/AC.261/IPM/10).

⁴⁰ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (excerpts from the Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials proposed at the Global Forum on Fighting Corruption: Safeguarding Integrity among Justice and Security Officials, held in Washington, D.C., from 24 to 26 February 1999).

⁴¹ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

⁴² Text taken from the proposal submitted by France (A/AC.261/IPM/10).

Article 7
Code of conduct for public officials

1. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public honesty, the proper exercise of responsibilities and the development of integrity.⁴³

Option 1

1. Each State Party shall agree to apply within its own institutional and legal system standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.

2. States Parties shall endeavour to incorporate into those standards the elements mentioned in the International Code of Conduct for Public Officials that appears in the annex to this Convention.

3. In addition, each State Party shall also, where appropriate, establish measures and systems to require public officials:

(a) To report to appropriate authorities acts of corruption committed in the performance of public functions;

(b) To make a declaration to appropriate authorities with respect to any gift or benefit obtained in the course of their duties and functions as public officials and any other employment or investment that may constitute a conflict of interest with respect to their functions as public officials.⁴⁴

3 bis. Each State Party shall take such measures as may be necessary to ensure that no prejudice is caused to or sanction taken against public officials who report to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.⁴³

4. States Parties shall create, maintain and strengthen mechanisms to enforce the standards established in accordance with paragraphs 1 and 3 of this article. In this respect, States Parties shall consider adopting where appropriate and in accordance with the fundamental principles of their domestic law, disciplinary measures against public officials who violate those standards.⁴⁴

5. For the purposes of implementing the provisions of this article, States Parties shall take account of the relevant initiatives of regional, interregional and multilateral organizations.⁴⁵

⁴³ Text taken from the proposal submitted by France (A/AC.261/IPM/10). France proposed that this paragraph precede any other text in this article.

⁴⁴ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

⁴⁵ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10) (art. III, paras. 1 and 2, of the Inter-American Convention against Corruption (with changes)).

Option 2⁴⁶

1. States Parties shall, through educational techniques for promoting knowledge, foster the exploration and assimilation of ethical values and conduct, while also stimulating the acquisition of skills and attitudes conducive to observance of the principles underlying this Convention.
2. States Parties shall initiate human skill development processes for improving their organizational culture.
3. With the cooperation of the relevant United Nations entities and other multilateral bodies, guides and manuals shall be drawn up to provide models enabling States Parties to further internal processes of inculcating values among public officials and to devise educational strategies for the exploration and assimilation of values.
4. States Parties shall set up and operate virtual ethics advice centres via the Internet and interactively to provide a service for the public and for public officials with queries or dilemmas of an ethical or legal nature, such centres to act as a support for efforts to strengthen moral values in society and to introduce tools into public administration that promote transparency.

Option 3⁴⁷

1. States Parties undertake to adopt codes of conduct for the correct, honourable and proper behaviour of public officials.
2. Such codes shall include rules:
 - (a) Requiring the reporting to the appropriate authorities of acts of corruption in the discharge of public functions by persons having a knowledge thereof in the performance of their duties;
 - (b) Preventing the improper use of public monies, property, services or information that is acquired in the performance or as a result of their official duties for activities not related to their official work;
 - (c) Prohibiting them from soliciting or receiving, directly or indirectly, for themselves or for their close relatives any gifts or other favours or benefits that may influence the impartial exercise of their functions.

*Article 8⁴⁸**Public procurement and public financial management*

1. Each State Party shall take the necessary steps to establish procurement rules based on transparency, openness and competition. Such rules shall include, inter alia:
 - (a) Public distribution of information on both tenders and awarded contracts;
 - (b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values; and

⁴⁶ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴⁷ Text taken from the proposal submitted by Argentina (A/AC.261/IPM/20).

⁴⁸ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and

(c) The requirement to base public procurement decisions on objective and transparent reasons in order to facilitate the subsequent verification of the correct application of the rules.

2. Each State Party shall take all relevant measures to ensure:

(a) The existence of and compliance with transparent procedures for the management of public finances, including the preparation and approval of the national budget;

(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances [in particular by higher administrative and financial oversight bodies]; and

(c) Adequate powers of remedy in the case of failure to comply with the requirements established in accordance with this paragraph.

3. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption.

4. Each State Party shall take such measures as may be necessary, within the framework of its domestic law on public accounting, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions or falsifications in respect of the books, records, accounts and financial statements of administrations and public entities.

6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations takes into consideration the consequences of acts of corruption committed by public officials.

Article 9⁴⁹
Public reporting

1. States Parties shall take such measures as may be necessary to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring, as regards access to information, as much transparency as is consistent with the need to achieve effectiveness.

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

(a) Reporting requirements for government departments and agencies;

(b) Publication of annual government reports.

France (A/AC.261/IPM/10).

⁴⁹ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

Article 10⁵⁰
Funding of political parties

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

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

2. Each State Party shall regulate the simultaneous holding of elective office and responsibilities in the private sector so as to prevent conflicts of interest.

Article 11⁵¹
Private sector

1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for engaging in corruptive practices, involving one or more legal persons incorporated within their jurisdiction, through appropriate legislative, administrative or other measures. Those measures should focus on:⁵²

- (a) Strengthening cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
- (c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions;

⁵⁰ Text taken from the proposal of Austria and the Netherlands (A/AC.261/IPM/4). (Paragraph 1 is based on paragraph 8 of the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption; paragraph 2 has been taken from conclusion 12 of the Third European Conference of Specialized Services in the Fight against Corruption, organized by the Council of Europe in Madrid from 28 to 30 October 1998.)

⁵¹ Text taken from the proposal of Austria and the Netherlands (A/AC/261/IPM/4).

⁵² Paragraph 1 is based on article 31, paragraph 2, of the Organized Crime Convention (amended); paragraph 2 reflects the principle of deregulation; paragraph 3 reflects the principle expressed in the 1996 Recommendation of the Council of the Organisation for Economic Cooperation and Development (OECD) on the Tax Deductibility of Bribes to Foreign Public Officials.

Option 1⁵¹

(d) Preventing the misuse of legal persons for corruption or criminal acts related specifically to corruption, inter alia, through the establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

Option 2⁵³

(d) Preventing the misuse of legal persons for committing or concealing acts of corruption by the adoption of measures concerning the identification of the constituents, holders of capital and shares, the identification of economic beneficiaries, registration obligations, advertising rules and, more generally, transparency in financial, legal and accounting transactions, inter alia, [...];

(e) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity.⁵³

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 12⁵⁴

Accounting

1. In order to combat corruption effectively, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the establishment of off-the-book accounts, the making of off-the-book or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of committing any of the offences established in accordance with articles [...] [Criminalization of corruption by a public official], [...] [Criminalization of corruption in the private sector] or [...] [Criminalization of the laundering of proceeds of corruption] of this Convention or of hiding such offences.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in

⁵³ Text taken from the proposal submitted by France (A/AC.261/IPM/10).

⁵⁴ Consolidated text taken from the proposals of Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

respect of the books, records, accounts and financial statements of such companies.⁵⁵

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.⁵³

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.⁵³

Article 13⁵⁶

Civil society

1. Each State Party shall take appropriate measures within its means to promote an active civil society and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

- (a) Inclusion of the public in decision-making processes;
- (b) Optimum access to information for the public and the media;
- (c) Protection of “whistle-blowers” as set forth in article [...] [Protection of “whistle-blowers” and witnesses] of this Convention;
- (d) Public support for networks of non-governmental organizations; and
- (e) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.⁵⁷

2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to the limits required for the smooth operation of inquiries, with respect for the rules of conduct in force, the rights to defence and the presumption of innocence.⁵³

Article 14⁵⁸

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;

⁵⁵ Article 8 of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (with slight changes).

⁵⁶ Text taken from the proposals submitted by Argentina (A/AC.261/IPM/20) and Austria and the Netherlands (A/AC.261/IPM/4).

⁵⁷ Article 31, paragraph 5, of the Organized Crime Convention (with changes).

⁵⁸ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

(b) Shall, without prejudice to article [...] [Mutual legal assistance] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering, including, where appropriate under domestic law, judicial authorities, have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, seizure, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, 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.

Article 15⁵⁸

Accounting measures to combat the bribing of public officials

1. In order to combat effectively the bribing of foreign and international public officials by legal persons subject to their jurisdiction, each State Party shall take such measures as may be necessary to incorporate within its laws and regulations:

(a) The keeping and maintenance of books and records of accounts;

(b) The disclosure of financial statements and publication of accounting and auditing standards; and

(c) The prevention of articles of monetary value or gifts, favours or advantages granted in the commission of the offences set forth in article [...] [Acts of corruption], paragraph 1 (c), of this Convention from being declared tax deductible and prohibition of the establishment of off-the-books accounts, the maintenance of double accounting systems or of inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or of concealing such bribery.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such legal persons.

Article 16
Preventive measures

Option 1

For the purposes set forth in article [...] [Statement of purpose] of this Convention, States Parties shall consider the applicability of legislative, administrative or other measures within their own institutional systems to establish, maintain and strengthen.⁵⁸

Option 2

States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen.⁵⁹

(a) Integrity and to deter, detect and, where appropriate, sanction or punish corruption by public officials for acts or omissions that affect the legality, honesty, loyalty, impartiality and efficiency incumbent upon them in the exercise of their position, post or commission. Such measures could include career civil service systems, mechanisms for the selection and hiring of public officials, tenure and seniority, fair and clear evaluations, awards and incentives, sanctions and fines, indicators for measuring results and so forth;⁵⁸

(b) The effective intervention of their authorities with a view to deterring, detecting and punishing corruption by public officials, including giving those authorities sufficient independence to dissuade officials from exerting any undue influence in the performance of their duties;⁵⁸

(c) Standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and to mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions. The standards shall also establish measures and systems requiring public officials to report to competent authorities acts of corruption in the performance of public functions, [as well as systems to promote the autonomy and independence of monitoring bodies.]⁵⁸ Such measures should help preserve the public's confidence in the integrity of civil servants and government processes;⁶⁰

(d) Codes of ethics and standards of conduct for the correct, honourable and proper performance of activities by individuals. Such standards shall be intended to prevent conflicts of interest, both between individuals and between individuals and public officials. The codes and standards shall also establish measures and systems that promote the reporting of illicit acts and corruption between individuals and in relations between individuals and public officials;⁵⁸

(e) Mechanisms to enforce those standards of conduct;⁶⁰

(f) Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;⁶⁰

⁵⁹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁶⁰ Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

(g) Systems for registering the income, assets and liabilities of persons who perform public functions in [certain]⁵⁹ posts [as]⁵⁹ specified by law and, where appropriate, for making such registration public;⁶⁰

(h) Systems of government hiring and procurement of goods and services that ensure the openness, equity and efficiency of such systems.⁶⁰ [Those systems shall consider restricting, to the greatest extent possible, the conferring of discretionary authority on public officials with respect to the granting of administrative authorizations and resolutions, as well as mechanisms for the strict monitoring of existing discretionary authority;]⁵⁸

(i) Government revenue collection and control systems that deter corruption⁶⁰ [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;]⁵⁸

(j) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them;⁵⁸

(k) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;⁶⁰

(l) Systems for [safeguarding and]⁵⁸ protecting public [servants]⁵⁹ officials and other persons [private citizens]⁵⁹ who, in good faith, report acts of corruption, [witnesses, informers and experts who participate in proceedings against individuals who have allegedly committed acts of corruption,]⁵⁸ including protection of their identities, in accordance with their constitutions and fundamental principles of their domestic law.⁶⁰ [Those systems shall also establish the necessary mechanisms for promoting confidence in public officials and for encouraging citizens to report acts of corruption;]⁵⁸

(m) Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating acts of corruption;⁶⁰

(n) Deterrents to the bribing of national [domestic]⁵⁹ and foreign public officials, such as mechanisms to ensure that commercial [publicly held]⁵⁹ companies and other types of association maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets and have sufficient internal accounting controls to enable their officers to detect acts of corruption;⁶⁰

(o) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party;⁵⁸

(p) [Effective]⁵⁸ mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption⁶⁰ [through, for example, the inclusion of civil society in decision-making processes, through monitoring committees, through its involvement in public bidding processes and through free access to information;]⁵⁸

(q) Consideration of the adoption of further preventive measures that take into account the relationship between equitable compensation and probity in public service;⁶⁰

(r) The establishment of codes of business ethics to ensure that businessmen undertake to observe the principle of transparency in their actions;⁶⁰

(s) The establishment of codes of conduct for public officials;⁶⁰

(t) The establishment of career path rules for the merit-based selection, career structure and retirement of officials.⁶⁰

Article 17⁶¹

Measures against corruption

1. In addition to the measures set forth in article [...] [Criminalization of corruption] of this Convention, each State Party shall take the necessary legislative, administrative and other effective measures to the extent possible and in compliance with its own legal system to promote integrity and to prevent, identify, detect and punish acts of corruption.

2. Each State Party shall take all the necessary measures, including independence for its own public organizations in order for them to take the effective measures mentioned in paragraph 1 of this article and to perform effective local inspection.

3. Each State Party shall adopt the required regulations to provide transparency in the public assets and service purchases, bidding laws and all public expenditure in order to prevent corruption and shall take the necessary measures in that regard.

4. In order to prevent corruption, each State Party shall take the legislative and administrative measures necessary for public officials and private persons and legal entities that are parties to public affairs to report to the State on a regular basis the assets and proceeds they have acquired.

Article 18⁶¹

Prevention

1. States Parties shall develop and encourage best practices and policies aimed at preventing corruption and shall develop and improve national projects in this regard.

2. In compliance with the basic principles of their domestic law, States Parties shall seek to reduce current or future opportunities, by means of appropriate legislative, administrative or other measures, for organized criminal groups to enter into legal markets with proceeds of crime. Such preventive measures should focus on:

(a) Strengthening cooperation between private institutions, including industry and law enforcement agencies or prosecutors;

⁶¹ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

(b) Developing standard procedures designed to protect the integrity of public and relevant private institutions, developing codes of conduct for relevant professions, especially lawyers, notaries, financial advisors, auditors and administrators of press and media organizations;

(c) Prevention of the misuse of tender procedures applied by public authorities and of licences and incentives granted by public authorities for commercial activities by organized criminal groups;

(d) Prevention of the misuse of legal persons. Such measures may include the following:

(i) The creation of public records on legal and natural persons who have taken part in the formation, administration and financing of legal persons;

(ii) The creation of the possibility of preventing persons convicted of crimes covered by this Convention from acting as administrators in companies of other legal persons for a reasonable period of time by a court order or any other suitable procedure;

(iii) The creation of public records of individuals who have been banned from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (ii) of this paragraph.

3. States Parties shall periodically re-evaluate the existing relevant legal instruments and administrative practices in order to determine any vulnerabilities that may be abused by organized criminal groups.

4. States Parties shall increase public awareness regarding the existence of and reasons for international corruption and the threat this crime poses. The information will be spread via the mass media where appropriate and shall include measures designed to encourage public participation in the prevention of and the struggle against such crimes.

5. States Parties shall coordinate among themselves and with the relevant international and regional organizations in the development and encouragement of measures referred to in this article, as appropriate.