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109TH CONGRESS, 1st Session | SENATE | TREATY DOC. 109–6

U.N. CONVENTION AGAINST CORRUPTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

UNITED NATIONS CONVENTION AGAINST CORRUPTION (THE "CORRUPTION CONVENTION"), WHICH WAS ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON OCTOBER 31, 2003

OCTOBER 27, 2005.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

49–118 ★ (STAR PRINT) WASHINGTON : 2005

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 27, 2005.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the United Nations Convention Against Corruption (the "Corruption Convention"), which was adopted by the United Nations General Assembly on October 31, 2003. I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the Corruption Convention, with an enclosure.

The international fight against corruption is an important foreign policy priority for the United States. Corruption hinders sustainable development, erodes confidence in democratic institutions, and facilitates transnational crime and terrorism. The Convention will be an effective tool to assist in the growing global effort to combat corruption.

The U.N. Corruption Convention is the first global multilateral treaty to comprehensively address the problems relating to corruption. It provides for a broad range of cooperation, including extradition and mutual legal assistance, and commits governments to take measures that will prevent corruption from happening in the first place. The Corruption Convention includes provisions to criminalize and prevent corruption and provides procedures for governments to recover assets that have been illicitly acquired by corrupt officials.

The provisions of the Corruption Convention are explained in the accompanying report of the Department of State. The report also sets forth proposed reservations that would be deposited by the United States with its instrument of ratification. With these reservations, the Convention will not require implementing and consent to its ratification, subject to the reservations, understandings, and declarations described in the accompanying report of the Department of State.

I recommend that the Senate give early and favorable consideration to the Corruption Convention and give its advice and consent to its ratification, subject to the reservations, understandings, and declarations described in the accompanying report of the Department of State.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 23, 2005.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the United Nations ("UN") Convention Against Corruption (the "Corruption Convention" or the "Convention"), which was adopted by the UN General Assembly on October 31, 2003. On December 9, 2003, the United States, which actively participated in the negotiations hosted by the UN Office on Drugs and Crime in Vienna, signed the Convention at Merida, Mexico. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

Accompanying the Convention are interpretative notes for the official records of the negotiations (or "*travaux préparatoires*"). They were prepared by the Secretariat of the Ad Hoc Committee that conducted the negotiations, based on discussions that took place throughout the process of negotiations. These notes would be submitted to the Senate for its information.

As of August 30, 2005, 126 countries have signed the Convention and 29 countries have become States Parties. The Convention, once ratified by thirty countries, will enter into force among those countries on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For each country that ratifies, accepts, approves, or accedes to the treaty after the deposit of the thirtieth instrument, the Convention will enter into force on the thirtieth day after the date of deposit of that country's instrument of ratification.

The Corruption Convention is the first multilateral treaty to comprehensively address, on a global basis, the problems relating to corruption. It expands the obligations contained in Articles 8 and 9 of the UN Convention Against Transnational Organized Crime, which relate to corruption, and complements existing regional anti-corruption instruments by expanding provisions to criminalize and prevent corruption and by providing procedures for governments to recover assets that have been illicitly acquired by corrupt officials. It also reflects and builds upon many of the provisions set forth in the Organization for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Corruption Convention establishes a treaty-based regime of obligations to provide mutual legal assistance that is analogous to those contained in other law enforcement treaties to which the United States is a party. The

Convention thus would enhance the ability of the United States to render and receive assistance on a global basis in the common struggle to prevent, investigate, and prosecute certain acts of corruption and in efforts to recover illicitly obtained assets.

A detailed, article-by-article analysis of the Convention is attached to this report. Included in that analysis are two reservations, an understanding, declarations that the Senate is being asked to include in its resolution of advice and consent. As further discussed in the analysis attached to this report, if the United States makes the proposed reservations, the existing body of federal and state law and regulations will be adequate to satisfy the Convention's requirements for legislation, and, thus, further legislation will not be required for the United States to implement the Convention.

It is my belief that the Convention would be advantageous to the United States and, subject to the proposed reservations, would be consistent with existing U.S. legislation. The Departments of Justice, Commerce, and Treasury join me in recommending that the Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the reservations, understanding, and declarations that are described fully in the attached analysis.

Respectfully submitted.

CONDOLEEZZA RICE.

Attachments:

1. Detailed analysis of the provisions of the Convention
2. *Travaux préparatoires*

DETAILED ANALYSIS OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

The following is a detailed analysis of the provisions of the United Nations Convention Against Corruption, which consists of seventy-one articles divided among eight chapters: (1) "General provisions"; (2) "Preventive measures"; (3) "Criminalization and law enforcement"; (4) "International co-operation"; (5) "Asset recovery"; (6) "Technical assistance and information exchange"; (7) "Mechanisms for implementation"; and (8) "Final provisions." In addition, the following discussion contains, where relevant, a description of two proposed reservations, a proposed understanding, and two proposed declarations.

Chapter I—General Provisions (Articles 1–4)

Article 1 ("Statement of Purpose") states that the purposes of the Convention are to promote and strengthen measures to prevent and combat corruption; facilitate international cooperation and technical assistance in the prevention of and fight against corruption; and promote integrity, accountability, and the proper management of public affairs and public property. Article 2 ("Use of terms") defines nine terms used in the Convention. In particular, the defined terms "public official" and "foreign public official" are crucial to understanding the scope of the Convention, since both the preventive measures and criminalization chapters of the Convention use these terms in describing the type of government position toward which a State Party must direct certain measures.

The Convention's definition of "public official" gives significant deference to a State Party's domestic law and practice in determining which group of persons must be covered by certain preventive measures and criminalization provisions. A "public official" is, for purposes of most of the Convention, defined as any one of three categories of persons: (1) a person holding a legislative, executive, administrative, or judicial office of the State Party concerned; (2) any other person who performs a public function or provides a public service, as defined by and applied in the domestic law of the State Party; and (3) any other person defined as a "public official" in the domestic law of such State Party. However, for purposes of "some specific measures" in the chapter on prevention of the Convention, a State Party may define "public official" as any person who performs a public function or provides a public service, as that term is defined and applied under the law of that State Party. In addition to these references to a State Party's law, the interpretative notes make clear that each State Party shall determine which persons are members of the three categories set forth in the first part of the definition. Furthermore, the *travaux préparatoires* indicate that for countries with subnational units of a self-governing nature, it is up to the State Party whether the term "office" is con-

sidered to apply to positions at the subnational level. Accordingly, there is significant discretion for federal states such as the United States in applying the term "public official."

A "foreign public official" is defined as any person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country. This definition, which is important for the provision in the Convention that requires each State Party to criminalize bribery of foreign public officials, provides clear guidance to each State Party as to which kind of foreign officials must be covered by that criminal law.

Article 3 ("Scope of application") elaborates the ambit of the Convention. In general, the Convention applies to the prevention, investigation, and prosecution of corrupt acts and to the freezing, seizure, confiscation, and return of proceeds of offenses established in accordance with the Convention.

One issue that arises throughout the Convention is the question of how it can be implemented consistent with the United States' federal system. With respect to the articles of the Convention that require States Parties to establish criminal offenses or related measures if they have not already done so (in particular Articles 15, 16, 17, 23, 25, 27, 29, 31–32, 35–37), it should be noted preliminarily that these obligations apply at the national level. Existing U.S. federal criminal law has limited scope, generally covering conduct involving interstate or foreign commerce or another important federal interest. Under our fundamental principles of federalism, offenses of a local character are generally within the domain of the states, but not all forms of conduct proscribed by the Convention are criminalized by all U.S. states in the form set forth by the Convention. (For example, some states may not criminalize all of the forms of conduct set forth under Article 25 ("Obstruction of justice").) Thus, in the absence of a reservation, there would be a narrow category of such conduct that the United States would be obligated under the Convention to criminalize, although under our federal system such obligations would generally be met by state governments rather than the federal government.

The obligations set forth in the Convention in the area of preventive measures are generally more flexible than those found in the chapter on criminalization. Nevertheless, it should be noted that preventive measures addressing the conduct of state and local officials are generally handled at the state and local level. While the states generally regulate their own affairs in a manner consistent with the obligations set forth in the chapter on preventive measures in the Convention, in some cases they may do so in a different manner. Therefore, in the absence of a reservation, there may be some preventive measures the United States would be required to implement under the Convention that are not fully addressed at the state level, for example potentially under Articles 6, 9, 12, and 13. In order to avoid such obligations in the criminalization and preventive measures areas, the following reservation is recommended to be included in the Senate's resolution of advice and consent:

> The Government of the United States of America reserves the right to assume obligations under this Conven-

> tion in a manner consistent with its fundamental principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to the conduct addressed in the Convention. U.S. federal criminal law, which regulates conduct based on its effect on interstate or foreign commerce, or another federal interest, serves as an important component of the legal regime within the United States for combating corruption and is broadly effective for this purpose. Federal criminal law does not apply where such criminal conduct does not so involve interstate or foreign commerce, or another federal interest. There are conceivable situations involving offenses of a purely local character where U.S. federal and state criminal law may not be entirely adequate to satisfy an obligation under the Convention. Similarly, in the U.S. system, the states are responsible for preventive measures governing their own officials. While the states generally regulate their own affairs in a manner consistent with the obligations set forth in the chapter on preventive measures in the Convention, in some cases they may do so in a different manner. Accordingly, there may be situations where state and federal law will not be entirely adequate to satisfy an obligation in Chapters II and III of the Convention. The Government of the United States of America therefore reserves to the obligations set forth in the Convention to the extent they (1) address conduct that would fall within this narrow category of highly localized activity or (2) involve preventive measures not covered by federal law governing state and local officials. This reservation does not affect in any respect the ability of the United States to provide international cooperation to other States Parties in accordance with the provisions of the Convention.

Furthermore, in connection with this reservation, it is recommended that the Senate include the following understanding in its resolution of advice and consent:

> The United States understands that, in view of its federalism reservation, the Convention does not warrant the enactment of any legislative or other measures; instead, the United States will rely on existing federal law and applicable state law to meet its obligations under the Convention.

Article 4 ("Protection of sovereignty") sets forth two standard provisions in UN instruments, stating that States Parties respect each other's sovereign equality and territorial integrity and providing that the Convention does not authorize a State Party to undertake in another State's territory the exercise of jurisdiction and performance of functions reserved for the authorities of that other State by its domestic law.

Chapter II—Preventive measures (Articles 5–14)

Chapter II contains a set of measures against corruption—other than criminalization—that States Parties are to take to minimize the opportunity for corrupt acts to occur in the first place. Many

of the articles in the chapter expressly provide that such measures are to be undertaken in accordance with the fundamental legal principles of each State Party's legal system. Most measures are directed toward corruption in the public sector, although the chapter also contains provisions to prevent corruption in the private sector and to promote the participation of civil society in the fight against corruption. Many of the obligations set forth in these articles include possible examples of ways in which a State Party might implement those obligations, although the specifics of such measures are left to the individual State Party.

As noted above it is recommended that the United States take a reservation to the obligations of this chapter to enable its implementation consistent with our federal system. With this reservation, the United States can implement the obligations of this chapter under existing law.

Each State Party is required under Article 5 ("Preventive anti-corruption policies and practices") to develop and implement or maintain effective and coordinated anti-corruption policies that promote goals such as transparency and accountability. Each State Party also must endeavor to review periodically its relevant legal instruments and administrative measures to determine whether they remain adequate to combat corruption, and is required, as appropriate, to collaborate with other States Parties and with relevant international and regional organizations to develop and promote measures to prevent corruption.

Article 6 ("Preventive anti-corruption body or bodies") requires that each State Party establish or maintain one or more independent, adequately staffed bodies to prevent corruption. Such body might, among other objectives, be tasked to implement the anti-corruption policies required by Article 5, or to increase and disseminate knowledge about the prevention of corruption. Each State Party is to inform the UN Secretary-General of the name and address of the authority that may assist other States Parties in developing preventive measures. For the United States, these authorities are the Department of Justice, Office of Justice Programs, National Institute of Justice and the Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Anticorruption Unit, and the United States would so notify the depositary.

States Parties must endeavor, under Article 7 ("Public sector") i where appropriate, to adopt, maintain, and strengthen systems for the recruitment, hiring, retention, promotion, and retirement of civil servants and, where appropriate, other non-elected public officials. Such systems should be based on transparent and objective principles, such as merit, include adequate procedures for the selection and training for positions considered particularly vulnerable to corruption, promote adequate and equitable remuneration, and promote education and training. Each State Party also shall consider whether to prescribe criteria concerning the candidature for and election to public office, and whether to enhance transparency in the funding of candidatures for public office and of political parties. The Convention does not require that such steps be taken.

Article 8 ("Codes of conduct for public officials") obliges States Parties to promote honesty and responsibility among its public officials.

Specifically, each State Party must endeavor to apply a code or standard of conduct to its public officials and, where appropriate, require public officials to declare to appropriate authorities their outside activities, employment, and investments. Each State Party must also consider establishing systems to facilitate reporting by public officials of acts of corruption and the taking of measures against public officials who violate codes or standards of conduct.

Article 9 ("Public procurement and management of public finances") requires each State Party to establish transparent and fair government procurement systems based on competition and objective criteria for decision-making, and provides a general description as to the types of issues such systems shall address, such as the publication in advance of conditions for participation in procurements. It also requires each State Party to take appropriate measures to promote accountability and transparency in the management of public finances, and provides a general description as to the types of issues such measures should address, such as timely reporting on revenue and expenditures.

Under Article 10 ("Public reporting") each State Party shall take measures to enhance transparency in its public administration. The article provides examples of such measures, which could include procedures and reports that allow public access to information.

Article 11 ("Measures relating to the judiciary and prosecution services") focuses on preventing corruption in the judiciary. With due regard for judicial independence, each State Party shall take measures to strengthen integrity and prevent opportunities for corruption among judges.

Article 12 ("Private sector") requires each State Party to take measures to prevent corruption and enhance accounting and auditing standards in the private sector, and it sets forth a list of possible measures to achieve these ends. Notably, States Parties are required to take measures to prohibit acts such as the establishment of off-the-books accounts and the recording of non-existent expenditures that are done for the purpose of committing any of the offenses established in accordance with the Convention. In addition, States Parties are required to disallow the tax deductibility of bribes.

Because civil society plays an important role in drawing attention to and fighting corruption, Article 13 ("Participation of society") of the Convention requires each State Party to take appropriate measures to promote the active participation of individuals and groups outside the public sector in the prevention of and fight against corruption. The article provides general examples of how States Parties should strengthen the participation of civil society, including promoting the contribution of the public to decision-making and ensuring the public has effective access to information. Each State Party must ensure that the relevant anti-corruption bodies referred to in Article 5 shall, where appropriate, be available to receive reports of incidents that may be considered to constitute offenses established in accordance with the Convention.

Article 14 ("Measures to prevent money-laundering") mandates a series of anti-money-laundering measures in the realm of financial regulation rather than criminal law. As part of a comprehensive regime, States Parties must impose customer identification, customer due diligence ("know your customer"), and suspicious transaction reporting requirements, and must consider the establishment of financial intelligence units. This article closely follows the text of Article 7 of the UN Convention Against Transnational Organized Crime, although it contains some modifications. Principal updates in Article 14 include: clear extension of anti-money-laundering reporting obligations to alternative remittance systems; a requirement to identify beneficial owners when appropriate; and a requirement that countries consider establishing wire originator information requirements. Like the Transnational Organized Crime Convention, Article 14 further calls upon States Parties, in establishing their domestic regulatory regimes, to be guided by existing international standards, which the negotiating record makes clear would include the principles elaborated by the Financial Action Task Force and its regional counterparts. The *travaux préparatoires* articulate that references to "relevant initiatives of regional, interregional and multilateral organizations" include references to the recent revisions of the Financial Action Task Force's Forty Recommendations and Eight Special Recommendations.

Chapter III—Criminalization and law enforcement (Articles 15–42)

Chapter III contains three types of provisions: substantive provisions under which a State Party must criminalize certain acts; provisions under which a State Party must merely consider criminalizing certain acts; and provisions related to participation, attempt, and procedural issues such as jurisdiction and statutes of limitations.

As noted above, it is recommended that the United States take a reservation to the obligations of this chapter to enable its implementation consistent with the current distribution of criminal jurisdiction under our federal system. With this reservation and given the fact that a number of provisions of this chapter that might have given rise to gaps are non-obligatory (e.g., portions of Articles 16, 27, 30–32, 37, and 39; as well as the entirety of Articles 18–22, 24, 33, and 41) the United States can implement the obligations of this chapter under existing federal and state law.

Article 15 ("Bribery of national public officials") is the first of five articles that require States Parties to adopt criminal legislation regarding specified offenses. This article requires a State Party to criminalize, when committed intentionally, the promise, offering or giving of bribes to or the solicitation or acceptance of bribes by its domestic public officials.

Another criminalization obligation follows in Article 16, which requires States Parties to criminalize, when committed intentionally, the promise, offering or giving of bribes to foreign public officials or officials of a public international organization in order to obtain or retain business or other undue advantage in relation to the conduct of international business. It also requires States Parties to consider criminalizing the solicitation or acceptance of bribes by foreign public officials.

Embezzlement is the subject of Article 17 ("Embezzlement, misappropriation or other diversion of property by a public official"). This article requires each State Party to criminalize, when committed intentionally, the embezzlement by a public official of any property entrusted to him or her. by virtue of his or her position.

In Article 18 ("Trading in influence"), States Parties are to consider whether to criminalize the provision of an undue advantage to or acceptance by a third party to induce that person to use his or her real or supposed influence to obtain, from a public authority of the State Party, an undue advantage for the original instigator of the act.

Similarly, Article 19 ("Abuse of functions") requires a State Party to consider criminalizing a public official's abuse of his or her function in order to obtain an undue advantage for himself or herself or for another person.

Article 20 ("Illicit enrichment") was included at the insistence of a number of the developing nations. The article requires States Parties to consider establishing the offense known as "illicit enrichment," which is defined as a significant increase in the assets of a public official that such official cannot reasonably explain in relation to his or her lawful income. Such an offense could require a defendant to bear the burden of establishing the legitimate source of the income in question. This article is not obligatory.

Article 21 ("Bribery in the private sector") is another article under which a State Party must consider whether to criminalize the behavior described therein. It addresses the bribing of or the receipt of a bribe by any person, when committed in the course of economic or business activity, in order that the person act or refrain from acting in breach of his or her duties.

Another discretionary criminalization provision is contained in Article 22 ("Embezzlement of property in the private sector"). Under this article, each State Party shall consider criminalizing embezzlement by a person who works in the private sector, in the course of economic or commercial activities, of property entrusted to him or her by virtue of his or her position.

Article 23 ("Laundering of proceeds of crime") contains the fourth affirmative criminalization obligation. This provision mandates the adoption of criminal law provisions, in accordance with the fundamental principles of a State Party's domestic law, punishing the conversion, transfer, concealment, or disguise of property with knowledge that it is the proceeds of crime. In more discretionary language, the article requires that, subject to the basic concepts of its legal system, a State Party also must criminalize the acquisition, possession, or use of property with knowledge that it is the proceeds of a crime, along with participation in, association with, conspiracy to commit, or attempts to aid, abet, facilitate, or counsel the commission of covered offenses.

The predicate offenses for money laundering must include a comprehensive range of criminal offenses established in accordance with the Convention. States Parties also must furnish the UN Secretary-General with copies of its laws giving effect to this article and of any subsequent changes to its laws. Article 23, which tracks in large part Article 6 of the UN Convention Against Transnational Organized Crime, is of critical importance to global anti-money-

laundering efforts because it imposes an international obligation on States Parties to expand the reach of their laundering laws to predicate offenses associated with corruption. References to the use of circumstantial evidence that are present in Article 6 of the Transnational Organized Crime Convention, were not repeated in Article 14, due to the inclusion of a broader article on the use of such evidence in Article 28.

Article 24 ("Concealment") states that each State Party shall consider criminalizing, when committed intentionally after the commission of any of the offenses established in accordance with the Convention, the concealment or continued retention of property by a person who knows that such property is the result of such offenses.

The fifth and final criminalization obligation established by the Convention—obstruction of justice in criminal proceedings related to offenses established in accordance with the Convention—appears in Article 25 ("Obstruction of justice") . As defined, the offense has two variants: first, the intentional use of force, threats, or intimidation, or the promise, offering, or giving of an undue advantage, in order to induce false testimony or to interfere in the giving of testimony or the production of evidence; and second, the intentional use of force, threats, or intimidation to interfere with the exercise of official duties by a justice or law enforcement official.

Article 26 ("Liability of legal persons") compels States Parties to fill what historically has been a loophole in the ability of many States to combat corruption: their inability to hold not only natural persons but also legal ones liable for illegal conduct. This provision requires the creation of criminal, civil, or administrative liability, and accompanying sanctions, for corporations that participate in the offenses established in accordance with the Convention. Such corporate liability is without prejudice to the criminal liability of the natural persons who committed the offenses.

Article 27 ("Participation and attempt") provides that participating in any capacity in an offense established in accordance with the Convention shall be made criminal. States Parties also may decide to criminalize the attempt to commit or the preparation to commit such an offense.

Article 28 ("Knowledge, intent and purpose as elements of an offense") recognizes that knowledge, intent, or purpose, when a requisite element of a crime, may be inferred from objective factual circumstances.

Under Article 29 ("Statute of limitations"), each State Party shall, where appropriate, establish a long statute of limitations period in which to commence proceedings for an offense established in accordance with this Convention, and provide for a longer statute of limitations (or its suspension) where the accused has evaded the administration of justice. During the negotiations, the United States described its statutes of limitations and indicated that it considered those statutes of limitations to be sufficiently long as to meet any obligations under this article. The U.S. statement met with no objection from other States.

Article 30 ("Prosecution, adjudication and sanctions") identifies a series of important considerations for States Parties in pursuing prosecutions relating to offenses established in accordance with the

Convention. They range from ensuring that criminal law sanctions are sufficiently serious to minimizing defendants' risk of flight. In addition, Article 30(2) requires each State Party to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities it affords to its public officials and the ability to prosecute offenses established in accordance with this Convention. Article 30(9) makes clear, however, that nothing in the Convention shall affect the principle that the description of the offenses established in accordance with the Convention and of the applicable legal defenses or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party.

The freezing, seizing, and confiscation of proceeds of crime are the subject of Article 31 ("Freezing, seizure and confiscation"). The article requires a State Party to adopt measures, to the greatest extent possible within its legal system, to enable confiscation of proceeds of, property of equivalent value, or property used in or detained for use in, offenses established in accordance with the Convention. Each State Party's courts or other competent authorities shall be empowered to order that bank and other records may be made available to enable confiscation proceedings to go forward, and bank secrecy may not be invoked in this context.

Article 32 ("Protection of witnesses, experts and victims") reflects a concern that those accused of corruption not undermine judicial processes. This provision obligates States Parties to take appropriate measures within their means to protect witnesses, experts, and victims (to the extent that they are witnesses) and, as appropriate, their relatives and other persons close to them, from retaliation or intimidation when they testify in criminal cases related to the offenses established in accordance with the Convention. Among the measures a State Party may, in its discretion, implement are witness protection programs and evidence-taking techniques that ensure the safety of witnesses—for example, video link from a remote location. Under this article, States Parties also are encouraged to consider assisting one another in providing witness protection. The article also requires a State Party, subject to its domestic law and in a manner not prejudicial to the rights of the defense, to enable victims' views to be considered during criminal proceedings. Many provisions of this article permit the exercise of discretion in particular cases, while others are either non-obligatory or are already consistent with or subject to U.S. state and federal laws; therefore, the article can be implemented by the United States under current statutes and regulations.

A State Party must consider, under Article 33 ("Protection of reporting persons"), incorporating into its domestic law protection against unjustified treatment for persons reporting in good faith and on reasonable grounds to the competent authorities any facts concerning offenses established in accordance with this Convention.

Article 34 ("Consequences of acts of corruption") requires that each State Party take measures, in accordance with fundamental principles of its domestic law, to address the consequences of corruption. The article contains no specifically mandated implementation measures.

Article 35 ("Compensation for damage") is intended to establish the principle that States Parties should ensure that they have mechanisms permitting persons or entities suffering damage to initiate legal proceedings. It requires a State Party to take such measures as may be necessary to ensure that entities or persons who have suffered damage as a result of an act of corruption may initiate legal proceedings against those responsible for such damage in order to obtain compensation. Some States, including the United States, were concerned that this article could be read to require or encourage a State to open its courts to civil suits unrelated or only tangentially related to that State, and for acts only marginally related to the act of corruption. In response to these concerns, the *travaux préparatoires* clarify that Article 35 was intended to address only legal proceedings against those who commit acts of corruption, rather than those who may be associated with others who commit acts of corruption. The article intentionally provides the States Parties significant flexibility in its implementation. The article does not restrict the right of a State Party to decide the precise circumstances under which it will make its courts available, nor does it require or endorse a particular choice made by a State Party in determining how it will meet its obligations under this article.

Article 35 would not have any direct effect on the potential exposure of U.S. companies or others in private litigation in the United States. The current laws and practices of the United States are in compliance with Article 35, and the United States does not construe Article 35 to require broadening or enhancing current U.S. law and practice in any way. U.S. jurisprudence permits persons who have suffered from criminal acts such as bribery to seek damages from the offenders under various theories. These remedies are sufficient to comply with this article. It should be noted that nothing in this article should be interpreted as requiring the United States to create a private right of action under the Foreign Corrupt Practices Act or as expanding the scope of the Alien Tort Statute to permit foreigners to litigate corruption claims in U.S. courts. The Convention does not itself suggest that corruption is a stand-alone violation of international law (but rather is something that States Parties should prohibit under their domestic law. Accordingly, this Convention does not signify that corruption is a norm that is specific, universal, and obligatory for purposes of the Alien Tort Statute. To avoid any potential confusion over these issues (it is recommended below that the Senate include a declaration in its resolution of advice and consent that makes clear that the provisions of the Convention (with the exception of Articles 44 and 46) are non-self-executing. None of the provisions of the Convention creates a private right of action.

Article 36 ("Specialized authorities") complements Article 6 in requiring a State Party to ensure the existence of at least one body that is specialized in combating corruption through law enforcement. The *travaux préparatoires* acknowledge that this body may be the same body that a State Party establishes to comply with Article 6.

Pursuant to Article 37 ("Cooperation with law enforcement authorities"), a State Party must take appropriate measures to en-

courage participants in offenses established in accordance with this Convention to assist law enforcement investigations. In so doing, States Parties are to consider reducing criminal penalties or granting immunity from prosecution for those who cooperate substantially. This article also envisages that States Parties will consider arrangements with one another to apply these inducements to persons located in one State Party who can assist an investigation into such offenses in another.

The importance of cooperation between different elements of a State Party's domestic system is highlighted by Article 38 ("Cooperation between national authorities"). A State Party must encourage cooperation between its public authorities and the authorities in that State Party that investigate and prosecute criminal offenses. Similarly, under Article 39 ("Cooperation between national authorities and the private sector"), a State Party shall take the necessary measures to encourage cooperation between national investigating and prosecuting authorities and private sector entities on matters relating to the commission of offenses established in accordance with the Convention, and to consider encouraging its nationals and others who habitually reside in its territory to report to those authorities regarding the commission of such offenses.

Article 40 ("Bank secrecy") supplements Article 31's treatment of bank secrecy in the freezing and confiscation context by more broadly requiring each State Party to ensure that its domestic law contains appropriate mechanisms to avoid, in domestic criminal prosecutions, obstacles that may arise out of bank secrecy laws.

Article 41 ("Establishment of criminal record") urges States Parties to consider adopting measures enabling an offender's previous conviction in one State to be taken into consideration in another State Party's subsequent criminal proceeding relating to offenses established in accordance with this Convention.

Article 42 ("Jurisdiction") lays out the jurisdictional principles governing the Convention's mandatory criminalization provisions generally. A State Party must establish jurisdiction in respect of offenses established in accordance with the Convention when committed in its territory or on board a vessel flying its flag or an aircraft registered under its laws. The latter jurisdiction (i.e., on board a vessel or aircraft) is not expressly extended under current U.S. law to these offenses—bribery of national public officials, bribery of foreign public officials and officials of public international organizations, embezzlement, money laundering, obstruction of justice, and participation—although certain cases can be pursued on other jurisdictional bases. For example, in most situations involving bribery of U.S. public officials, misappropriation of government property, or obstruction of U.S. investigations or proceedings, U.S. federal jurisdiction may extend over such offenses occurring outside the United States, either through an express statutory grant of authority (e.g., Title 18, United States Code, Sections 1512(h), 1956(f), 1957(d)), or, most frequently, through application of principles of statutory interpretation. However, since under current U.S. law we cannot always ensure our ability to exercise jurisdiction over these offenses if they take place outside our territory on such vessels or aircraft, a reservation will be required for those cases in which such jurisdiction is not available. Accordingly, it is recommended

that the following reservation be included in the Senate's resolution of advice and consent:

> The Government of the United States of America reserves the right not to apply in part the obligation set forth in Article 42, paragraph 1(b) with respect to the offenses established in accordance with the Convention. The United States does not provide for plenary jurisdiction over offenses that are committed on board ships flying its flag or aircraft registered under its laws. However, in many circumstances, U.S. law provides for jurisdiction over such offenses committed on board U.S.-flagged ships or aircraft registered under U.S. law. Accordingly, the United States shall implement paragraph 1(b) to the extent provided for under its federal law.

A State Party is permitted, but not required, to establish jurisdiction over the five offenses when committed against one of its nationals, by one of its nationals or residents, or against the State Party itself. (Nationality and passive personality jurisdiction is limited under U.S. law, but is common in European countries and other civil law jurisdictions.) Permissive jurisdiction is further envisioned over the offense of money laundering, as defined in the Convention, where it is committed outside a State Party's territory with a view to the commission of certain offenses within its territory.

Article 42 requires a State Party to establish its jurisdiction when it refuses to extradite an offender for offenses covered by the Convention solely because the person is one of its nationals. The United States extradites its nationals, so this provision will impose no new requirements on our legal system. It will, however, help ensure that States Parties that do not extradite their nationals take steps to ensure that participants in offenses related to corruption face justice there even for crimes committed abroad.

Chapter IV—International cooperation (Articles 43–50)

Article 43 ("International cooperation") provides an overview, forecasting the requirements in other articles of this chapter that States Parties cooperate in criminal matters, and articulating that States Parties shall consider whether to cooperate, where appropriate, with each other in civil and administrative matters relating to corruption. The article also clarifies how the issue of dual criminality, which arises in the context of extradition and mutual legal assistance, is to be analyzed.

Article 44 ("Extradition") elaborates a regime for extradition of persons for offenses established in accordance with this Convention, as long as the offense is criminal under the laws of the requesting and the requested States Parties. The article provides that States Parties may make extradition conditional on a bilateral extradition treaty. Pursuant to this provision, for the United States, the Convention will not provide a substitute international legal basis for extradition, which will continue to be governed by U.S. domestic law and applicable bilateral extradition treaties, including their grounds for refusal. As such a State, the United States is obliged by Article 44(6) to so notify the UN Secretary-

General. Accordingly, upon ratification of the Convention, the United States would notify the depositary that pursuant to Article 44(6) it will not apply Article 44, paragraph 5.

For the United States, the principal legal effect of this article would be to deem the offenses established in accordance with the Convention (i.e., the mandatory offenses) to be extraditable offenses under U.S. bilateral extradition treaties. The result would be to expand the scope of older U.S. bilateral extradition treaties that list extraditable offenses and were concluded at a time when offenses such as money laundering did not yet exist.

For numerous other States Parties that do not make extradition conditional on the existence of a separate extradition treaty, however, the Convention can, with regard to the offenses it covers, afford that international legal basis *inter se*.

Article 44(11) requires a State Party that does not extradite its nationals, if requested by another State Party seeking extradition of such a national for offenses established in accordance with the Convention, to submit the case for purposes of domestic prosecution and to conduct the proceedings in the same manner as it would for purely domestic offenses of similar gravity. (This provision is the substantive obligation to which the above-mentioned jurisdictional provision in Article 42 relates.) A State Party may satisfy this obligation instead by temporarily surrendering its national for trial in the State Party that sought extradition, on the condition that he or she be returned to serve the resulting sentence.

Article 44 also contains non-mandatory provisions designed to facilitate extradition, including, for example, a mechanism for provisional arrest in urgent circumstances, as well as an exemption from the obligation to extradite in a case where the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of sex, race, religion, nationality, ethnic origin or political opinions, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Under Article 45 ("Transfer of sentenced persons"), States Parties may consider entering into bilateral or multilateral agreements or arrangements to enable the transfer to their territory of incarcerated persons who have been convicted abroad for offenses established in accordance with the Convention, in order that they may complete their prison sentences in their countries of nationality.

Pursuant to Article 46 ("Mutual legal assistance"), States Parties are obligated to afford each other the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to offenses covered by this Convention. Pursuant to paragraph 6 of Article 46, where other international agreements governing mutual legal assistance exist between States Parties they shall be utilized and the Convention does not affect their provisions. This will be true for the United States in many instances, due to our extensive network of bilateral and regional mutual legal assistance treaties ("MLATs"). It is anticipated, however, that the United States will make and receive requests for mutual assistance under this Convention in a number of corruption-related cases involving States Parties with which we lack an applicable bilateral or regional agreement.

Consequently, Article 46, in particular paragraphs 9–29, provides a framework for mutual legal assistance to States Parties with which a State Party does not have a separate mutual legal assistance treaty obligation that is of a nature comparable to such U.S. bilateral and multilateral MLATs. This article identifies the range of purposes for which mutual assistance may be requested and the requirements for the content of requests for assistance, and states that, even absent a request, one State Party also may spontaneously transmit to another information relating to criminal matters that it believes could assist inquiries or proceedings there. Detained persons may be transferred voluntarily for purposes of providing evidence in another State Party as well.

Under paragraph 9 of Article 46, States Parties may (although they are encouraged not to) decline to render mutual legal assistance in certain cases on the ground of an absence of dual criminality. Where a request involves coercive action, matters of a *de minimis* nature, or matters for which the cooperation sought is available under other provisions of the Convention (such as law enforcement cooperation pursuant to Article 48), States Parties may decline to render assistance in the absence of dual criminality. However, where a request involves non-coercive action, States Parties are to provide mutual legal assistance unless inconsistent with the basic concepts of its legal system. Thus, in addition to the fundamental grounds for refusal set forth in other paragraphs, the United States could decline a request for non-coercive action where the offense is fundamentally at odds with U.S. notions of due process, presumption of innocence, or other basic tenets of U.S. jurisprudence.

As previously noted, Article 46 establishes certain modern procedures for mutual legal assistance that apply in the absence of another treaty between the Parties concerned. These include a requirement to designate central authorities to handle requests. The Department of Justice, Criminal Division, Office of International Affairs, would serve as the Central Authority for the United States. Each State Party is obliged by Article 46(13) to notify the UN Secretary-General of its designated Central Authority. Accordingly, upon ratification of the Convention, the United States would notify the depositary that the Office of International Affairs, United States Department of Justice, Criminal Division, is designated as its central authority for mutual legal assistance under the Convention.

Under Article 46, paragraph 14, a State Party must specify the language in which mutual assistance requests to it shall be made. Accordingly, upon ratification of the Convention, the United States would notify the depositary that requests for mutual legal assistance under the Convention should be made in, or accompanied by a translation into, the English language.

In addition, Article 46, paragraph 18, encourages the use of video-conferencing as an alternative to taking of evidence in person. The article also incorporates provisions found in a number of U.S. bilateral MLATs generally precluding a requesting State Party from using information or evidence in investigations, prosecutions, or judicial proceedings other than those identified in the request, unless the requested State Party consents (see paragraph

19). In additional a requested State Party may be obliged to keep confidential the fact and substance of a request, except to the extent necessary to execute it, or where the information or evidence provided is exculpatory to an accused person (see paragraph 20).

Article 46, paragraph 21, specifies four grounds for refusing mutual legal assistance: (a) if the request does not conform to the requirements of the Convention; (b) if the requested State Party considers that execution is likely to prejudice its sovereignty, security, *ordre public*, or other essential interests; (c) if domestic law in the requested State Party would prohibit the action requested with regard to any similar offense under its own jurisdiction; or (d) if granting the request would be contrary to the legal system of the requested State Party relating to mutual legal assistance. These grounds for refusal are broader than those generally included in U.S. MLATs, and, in view of the large number of countries that may become Party to the Convention, will serve to ensure that our mutual assistance practice under the Convention corresponds with sovereign prerogatives.

Article 46, paragraphs 8 and 22 provide, respectively, that assistance may not be refused on the ground of bank secrecy, or on the sole ground that the offense involves a fiscal matter. Moreover, if a request could be refused on any of the general grounds for refusal set forth in paragraph 21 or postponed on the ground that it interferes with an ongoing domestic investigation, prosecution, or judicial proceeding, the States Parties involved shall consult to consider whether it may be granted subject to terms and conditions. If the requesting State Party accepts assistance subject to conditions, it is bound to comply with those conditions.

Finally, Article 46 addresses several other aspects of mutual assistance that are relevant in the absence of another MLAT in force between the States Parties concerned. It sets forth a procedure for providing safe conduct guarantees to a person who travels to a requesting State Party in order to give evidence (see paragraph 27). Ordinary costs of executing mutual assistance requests are, as a rule, to be borne by the requested State Party, but if substantial or extraordinary expenses are entailed the requesting and requested States Parties shall consult on their allocation (see paragraph 28). States Parties also may rely on the mutual assistance mechanism of the Convention to obtain from another State Party government records, documents, or information on the same terms as they are available to the general public under domestic law; if not available to the general public, however, a requesting State Party's access to them lies in the discretion of the requested State Party (see paragraph 29).

The possibility of transferring criminal proceedings between States Parties is envisioned in Article 47 ("Transfer of criminal proceedings"). This article calls on States Parties to consider the possibility of transferring criminal proceedings, recognizing that transfer can be considered to be efficient in cases where several jurisdictions are involved with different aspects of acts related to corruption.

The importance of police-to-police cooperation, as distinct from formal mutual legal assistance, is highlighted by Article 48 ("Law enforcement cooperation"). States Parties must cooperate, con-

sistent with their respective domestic legal and administrative systems, to enhance effective action among their law enforcement authorities, *inter alia*, by sharing information on persons, groups, and property involved in offenses covered by the Convention. The proviso that cooperation shall be conducted consistent with the respective domestic and administrative systems provides the flexibility required to enable the exercise of discretion in making determinations on the appropriateness of a request for cooperation on a case-by-case basic.

In order better to combat organized criminal activities that span borders, Article 49 ("Joint investigations") encourages States Parties to reach agreements or arrangements, either general or case-specific, to conduct joint investigations. Article 50 ("Special investigative techniques") in turn contemplates that, if permitted by the basic principles of its domestic legal system, law enforcement authorities be given the ability to use controlled delivery, electronic surveillance, and undercover operations. Use of these techniques at the international level would be regulated by the States Parties involved through general or case-specific agreements or arrangements.

Chapter V—Asset Recovery (Articles 51–59)

Article 51 states the general principle that States Parties should cooperate in asset recovery cases.

Article 52 requires States Parties to take certain preventive measures specifically focused on detection of transactions or deposits involving corrupt public officials. States Parties must require financial institutions to verify the identity of customers, take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts, and to conduct enhanced scrutiny of accounts held by individuals who are or have been in prominent public positions. The *travaux préparatoires* make clear that these requirements are to be implemented on a national basis with due regard to particular risks of money laundering. For example, some countries will apply the enhanced scrutiny standards to foreign officials only, and other countries may wish to apply these standards to domestic officials as well. The article further requires adequate record keeping by financial institutions and prohibits the establishment of banks with no physical presence.

Paragraph 5 of this article requires States Parties to consider taking such measures as may be necessary to establish financial disclosure systems for public officials as well as mechanisms for sharing information obtained through these systems. Paragraph 6 requires States Parties to consider establishing measures to require reporting by appropriate public officials of foreign financial accounts.

Article 53 ("Measures for direct recovery of property") requires each State Party to have three basic methods for allowing another country to make a direct claim, like any other private litigant, on property located in its territory, where that property is acquired through the commission of one of the offenses that must be established by all States Parties in accordance with Chapter III of the Convention. Such direct recovery would take place without recourse to mutual legal assistance procedures. First, States Parties must

permit other States Parties to initiate civil actions in their courts to establish title or ownership of the property in question. Second, States Parties must have a mechanism by which their courts can order that another State Party be compensated or paid damages, such as through court-ordered restitution following a criminal conviction. Finally, States Parties are required to have a mechanism in confiscation proceedings for allowing the recognition of another State Party's claim as a legitimate owner of the property.

Article 54 ("Mechanisms for recovery of property through international cooperation in confiscation") requires States Parties to establish a legal framework to enable them to provide assistance to other States Parties in the recovery of assets acquired through the commission of one of the offenses that must be criminalized by all States Parties in accordance with Chapter III of the Convention. Specific mechanisms required are (a) authority to give effect to foreign confiscation judgments, and (b) domestic procedures to confiscate property of foreign origin involved in offenses over which it may have jurisdiction. States Parties are also required to consider establishing mechanisms for confiscation in the absence of a criminal conviction.

Paragraph 2 of Article 54 requires States Parties to have certain mechanisms for freezing or seizing property, including on the basis of a freezing or seizure order by another State Party, or upon a request by another State Party that provides sufficient grounds for taking such action. In addition, States Parties are to consider establishing additional measures for freezing or seizing property, for example, on the basis of a foreign arrest or charge.

Article 55 ("International cooperation for purposes of confiscation") specifies how the mechanisms established pursuant to Article 54 will be used in practice in asset recovery cases involving the commission of one of the offenses that must be criminalized. Paragraph 1 requires States Parties receiving a request for assistance from another State Party to use the mechanisms established pursuant to Articles 31 and 54 to seek either an order of confiscation or the execution of a foreign judgment in connection with one of the mandatory offenses under the Convention. Paragraph 2 requires that State Parties utilize the freezing and seizure mechanisms established in accordance with Articles 31 and 54 in response to a request from another State Party.

Paragraph 3 specifies that the procedures to be used in implementing this article are mutual legal assistance procedures and that the provisions of Article 46 on mutual legal assistance apply, including the exceptions to the obligation to provide assistance. It also details the type of information that must be provided by the requesting State Party in its request for assistance. Paragraph 4 notes the continued application of domestic law and other bilateral and multilateral agreements. Paragraph 7 provides for important additional safeguards by stating that assistance may be refused if the requesting State Party does not provide sufficient and timely evidence or if the value of the property in question is of a *de minimis* value. Paragraph 8 requires that before provisional measures are lifted, the requested State Party should consult with the requesting State Party. Finally, paragraph 9 says that nothing in the

article should be construed as prejudicing the rights of bona fide third parties.

Article 56 ("Special cooperation") provides that States Parties should endeavor to engage in spontaneous information sharing with each other where such information sharing would assist another party in an asset recovery case.

Article 57 ("Return and disposal of assets") sets forth a framework for the disposition of property confiscated by one State Party at the request of another. Paragraph 1 makes clear that disposition is to take place in accordance with domestic law of the State Party executing the confiscation and the provisions of the Convention, in particular Articles 31 and 55. Paragraph 2 requires each State Party to have in place mechanisms to permit, at the request of another State Party, the return of confiscated property to rightful owners, taking into account the rights of bona fide third parties.

Paragraph 3 describes how the mechanisms to be established in accordance with paragraph 2 are to be used in specific kinds of cases. This paragraph also makes clear that disposition of property is handled using mutual legal assistance procedures provided for in Articles 46 and 55. In other words, for example, the exceptions to the obligation to provide mutual legal assistance set forth in Article 46(21) apply to the disposition of property as well.

Subject to these protections, paragraph 3(a) states that where a State Party enforces a confiscation judgment of another State Party involving public funds embezzled from the requesting State Party, the requested State Party shall return the property to the requesting State Party. The provision does not specify whether international asset sharing, procedures to compensate victims, or other mechanisms must be used to effect such a return.

Paragraph 3(b) provides that, where the property involved is the proceeds of an offense other than embezzlement of public funds, the requested State Party shall return the property to the requesting State Party where the requesting State Party reasonably establishes its ownership of the property prior to the offense or where the requested State Party, at its discretion, recognizes damage to the requesting State Party as a basis for return. Finally, paragraph 3(c) provides that in all cases not covered by paragraphs 3(a) and 3(b), the requested State Party will give priority consideration to returning the property to the requesting State Party, returning the property to prior legitimate owners, or compensating victims of crime.

Paragraph 4 notes that the requested State Party may deduct reasonable costs before disposition of the property. The *travaux préparatoires* indicate these costs are intended to be actual expenses rather than finders' fees or other unspecified charges. Paragraph 5 provides for the possibility of case-by-case bilateral agreements on disposition of property.

Article 58 requires States Parties to consider the establishment of a financial intelligence unit ("FIU") to assist in cooperation in asset recovery cases. The *travaux préparatoires* make clear that the same FIU established in accordance with Article 14 may be used to comply with the provisions of this article.

Article 59 states that States Parties shall consider bilateral or multilateral agreements to further enhance cooperation on asset recovery cases.

Chapter VI—Technical assistance and information exchange (Articles 60–62)

Training and technical assistance are dealt with in Article 60, which requires States Parties, to the extent necessary, to train domestic law enforcement personnel on matters relating to the prevention and detection of corruption, including in the area of the preparation of mutual legal assistance requests. The article also contemplates that States Parties will consider various potential methods to provide technical assistance to each other in their plans and programs to combat corruption.

Article 61 ("Collection, exchange and analysis of information on the nature of organized crime") is a counterpart provision to Article 48. This article calls upon States Parties, together with their scientific and academic communities, to consider undertaking analytical studies relating to corruption and share the resulting expertise with each other.

Article 62 ("Other measures: implementation of the Convention through economic development and technical assistance") supplements Article 60 by requiring States Parties to take measures to facilitate the implementation of the Convention with a particular view toward cooperating internationally and strengthening the capacity of developing countries to prevent and combat corruption.

Chapter VII—Mechanisms for implementation (Articles 63–64)

Article 63 ("Conference of the States Parties to the Convention") establishes a structure for promoting and reviewing the implementation of the Convention. A Conference of the States Parties ("COSP") is to be convened within a year after the Conventions entry into force initially for the purpose of adopting rules of procedure, rules governing payment of expenses, and rules governing the activities with which it is charged. The negotiating history of this article reflects that sources of funding for the COSP include voluntary contributions, which takes into account U.S. legal provisions on funding framework treaty-based organizations.

Among the most important tasks assigned to the COSP are facilitating technical assistance, the provision of which is discretionary under the Convention, and information exchange among States Parties and reviewing periodically the implementation of the Convention. The latter activity will entail scrutiny of information supplied by States Parties themselves on their programs and legislative and administrative measures. The COSP also may develop other supplemental review mechanisms.

To support the COSP, Article 64 ("Secretariat") states that the UN Secretary-General shall provide the necessary secretariat services. The UN General Assembly resolution adopting the Convention in turn requested that the Vienna-based UN Office on Drugs and Crime be designated for this purpose.

Chapter VIII—Final provisions (Articles 65–71)

Article 65 ("Implementation of the Convention") provides that each State Party shall take the necessary measures, including legislative and administrative measures, to ensure proper implementation of its obligations under the Convention. This provision also clarifies that the Convention does not preclude the adoption of stricter measures to combat corruption.

Article 66 ("Settlement of disputes") establishes a mechanism for States Parties to settle disputes concerning the interpretation or application of the Convention. If a dispute cannot be settled within a reasonable time through negotiation, a State Party may refer it to arbitration, or to the International Court of Justice if the Parties are unable to agree on the organization of the arbitration. A State Party may, however, opt out of dispute settlement mechanisms other than negotiation by making a declaration to that effect. In keeping with recent practice, the United States should do so. Accordingly, it is recommended that the following declaration be included in the Senate's resolution of advice and consent:

> In accordance with Article 66, paragraph 3, the Government of the United States of America declares that it does not consider itself bound by the obligation set forth in Article 66, paragraph 2.

Article 67 ("Signature, ratification, acceptance, approval and accession") provides that the Convention is open for signature by all States, and by regional economic integration organizations ("REIOs"), such as the European Union, where at least one of its member States has signed. REIOs that become party to the Convention also are required to declare the extent of their competence with respect to matters covered by the Convention. The Convention is subject to ratification, acceptance, approval, or accession, with instruments thereof to be deposited with the Secretary-General of the United Nations.

Pursuant to Article 68 ("Entry into force"), the Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval, or accession. For a State ratifying or otherwise consenting to be bound thereafter, the Convention shall take legal effect on the thirtieth day after the deposit of that State's instrument.

Amendment of the Convention is governed by Article 69 ("Amendment"), which establishes procedures for proposal, consideration, and decision on amendments with the involvement of the COSP. Adoption of proposed amendments requires consensus or, as a last resort, a two-thirds majority of the States Parties present and voting at the COP. The voting rights of REIOs are addressed in a way that is standard in international instruments. Any adopted amendment is subject to ratification, acceptance, or approval by States Parties, and binds only those States Parties that have expressed their consent to be so bound.

Article 70 ("Denunciation") states that any State Party may denounce the Convention by written notification to the Secretary-General of the United Nations. The Convention shall cease to be in force for the denouncing State one year after receipt of such notification.

Article 71 ("Depositary and languages") designates the Secretary-General of the United Nations as depositary for the Convention, and specifies that the original of the Convention is equally authentic in each of the six UN languages (Arabic, Chinese, English, French, Russian, and Spanish).

Finally, the terms of the Convention, with the suggested reservations, are consonant with U.S. law. To clarify that the provisions of the Convention, with the exceptions of Articles 44 and 46, are not self-executing, it is recommended that the Senate include the following declaration in its resolution of advice and consent:

> The United States declares that the provisions of the Convention (with the exception of Articles 44 and 46) are non-self-executing. None of the provisions of the Convention creates a private right of action.

Article 44 and Article 46 of the Convention contain detailed provisions on extradition and legal assistance that would be considered self-executing in the context of normal bilateral extradition practice. It is therefore appropriate to except those provisions from the general understanding that the provisions of the Convention are non-self-executing.

United Nations Convention against Corruption

Preamble

The States Parties to this Convention,

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

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

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

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

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

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

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

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

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

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

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

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

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

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[1] 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,[2] the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,[3] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[4] the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,[5] and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,[6]

Have agreed as follows:

Chapter I
General provisions

Article 1
Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

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

[1] See E/1996/99.
[2] *Official Journal of the European Communities*, C 195, 25 June 1997.
[3] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).
[4] Council of Europe, *European Treaty Series*, No. 173.
[5] Ibid., No. 174.
[6] General Assembly resolution 55/25, annex I.

Article 2
Use of terms

For the purposes of this Convention:

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

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

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

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

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

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

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

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3
Scope of application

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

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

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Chapter II
Preventive measures

Article 5
Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

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

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6
Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

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

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

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

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7
Public sector

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

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8
Codes of conduct for public officials

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

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

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

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

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9
Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10
Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11
Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12
Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13
Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14
Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

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

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Chapter III
Criminalization and law enforcement

Article 15
Bribery of national public officials

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

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16
Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17
Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or

private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18
Trading in influence

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

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19
Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20
Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21
Bribery in the private sector

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

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

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector

entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22
Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23
Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

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

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24
Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25
Obstruction of justice

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

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 27
Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28
Knowledge, intent and purpose as elements of an offence

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

Article 29
Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

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

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic

law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

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

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

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

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

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

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31
Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by

the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32
Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33
Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34
Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35
Compensation for damage

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

Article 36
Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their

functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37
Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38
Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

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

Article 39
Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40
Bank secrecy

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

Article 41
Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a

view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

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

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV
International cooperation

Article 43
International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

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

Article 44
Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

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

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

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

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

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46
Mutual legal assistance

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

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

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

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding

inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

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

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent

circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50
Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance

and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Chapter V
Asset recovery

Article 51
General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52
Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

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

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

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

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53
Measures for direct recovery of property

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

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property

acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54
Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

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

Article 55
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of

the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

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

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

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56
Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57
Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58
Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59
Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI
Technical assistance and information exchange

Article 60
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

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

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

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

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

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects

and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61
Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

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

Article 62
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII
Mechanisms for implementation

Article 63
Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including

rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

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

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII
Final provisions

Article 65
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

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

Article 66
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States

Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70
Denunciation

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

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

Article 71
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

United Nations A/58/422/Add.1

General Assembly

Distr.: General
7 October 2003

Original: English

Fifty-eighth session
Agenda item 110
Crime prevention and criminal justice

Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions

Addendum

Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Corruption

I. Introduction

1. The present document contains interpretative notes that were discussed by the Ad Hoc Committee for the Negotiation of a Convention against Corruption throughout the process of negotiation of the draft convention. These notes will be included in the official records of the negotiation process, which the Secretariat will prepare in accordance with standard practice. The present document is submitted to the General Assembly for information purposes only; the Ad Hoc Committee took no formal action on these notes and none is expected of the Assembly at its fifty-eighth session.

II. Interpretive notes

Chapter I

Article 2

Subparagraph (a)

2. The *travaux préparatoires* will indicate that the word "executive" is understood to encompass the military branch, where appropriate.

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

4. The *travaux préparatoires* will indicate that, for the purpose of defining "public official", each State Party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied.

Subparagraph (b)

5. The *travaux préparatoires* will indicate that the term "foreign country" includes all levels and subdivisions of government, from national to local.

Subparagraph (d)

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

Subparagraph (f)

7. The *travaux préparatoires* will indicate that the word "temporarily" is understood to encompass the concept of renewability.

Article 3

Paragraph 1

8. The *travaux préparatoires* will indicate that the phrase "in accordance with its terms" is not intended to limit the application of mutual legal assistance.

9. The *travaux préparatoires* will indicate that offences established in accordance with the Convention should not be understood to require the adoption of new domestic legislation for the inclusion of an offence under domestic law where a corresponding offence already exists under such law.

Article 4

Paragraph 1

10. The *travaux préparatoires* will indicate that the principle of non-intervention is to be understood in the light of Article 2 of the Charter of the United Nations.

Chapter II

Article 6

11. The *travaux préparatoires* will indicate that the body or bodies referred to in this article may be the same as those referred to in article 36.

Article 7

Paragraph 1

12. The *travaux préparatoires* will indicate that the existence of the systems referred to in paragraph 1 of article 7 shall not prevent States Parties from maintaining or adopting specific measures for disadvantaged groups.

Article 9

Paragraph 1

13. The *travaux préparatoires* will indicate that nothing in paragraph 1 shall be construed as preventing any State Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential interests related to national security.

Article 10

Subparagraph (a)

14. The *travaux préparatoires* will indicate that, regarding the protection of personal information, the use of which is addressed in the Convention, States Parties may be inspired by principles laid down in the guidelines for the regulation of computerized personal data files adopted by the General Assembly in its resolution 45/95 of 14 December 1990.

Article 11

Paragraph 2

15. The *travaux préparatoires* will indicate that reference to similar independence should be understood to include cases where such independence is identical.

Article 13

Paragraph 1

16. The *travaux préparatoires* will indicate that reference to non-governmental organizations and community-based organizations relates to such organizations established or located in the country. This note is intended as an explanation and not as an amendment to paragraph 1.

Subparagraph (d)

17. The *travaux préparatoires* will indicate that the intention behind paragraph 1 (d) is to stress those obligations which States Parties have already undertaken in various international instruments concerning human rights to which they are parties and should not in any way be taken as modifying their obligations.

Article 14

Paragraph 1

Subparagraph (a)

18. The *travaux préparatoires* will indicate that the words "other bodies" may be understood to include intermediaries, which in some jurisdictions may include stockbroking firms, other securities dealers, currency exchange bureaux or currency brokers.

19. The *travaux préparatoires* will indicate that the words "suspicious transactions" may be understood to include unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer's business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general.

Subparagraph (b)

20. The *travaux préparatoires* will indicate that the establishment of a financial intelligence unit called for by this subparagraph is intended for cases where such a mechanism does not yet exist.

Paragraph 4

21. The *travaux préparatoires* will indicate that, during the negotiations, the words "relevant initiatives of regional, interregional and multilateral organizations" were understood to refer in particular to the Forty Recommendations and the Eight Special Recommendations of the Financial Action Task Force on Money Laundering, as revised in 2003 and 2001, respectively, and, in addition, to other existing initiatives of regional, interregional and multilateral organizations against money-laundering, such as the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force of South America against Money Laundering and the Organization of American States.

Chapter III

22. The *travaux préparatoires* will indicate that it is recognized that States may criminalize or have already criminalized conduct other than the offences listed in this chapter as corrupt conduct.

Article 16

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

Paragraph 1

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

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

Paragraph 2

26. The *travaux préparatoires* will indicate that negotiating delegations considered it quite important that any State Party that had not established this offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of this offence by a State Party that had established it in accordance with the Convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice.

27. The *travaux préparatoires* will indicate that the word "intentionally" was included in this paragraph primarily for consistency with paragraph 1 and other provisions of the Convention and is not intended to imply any weakening of the commitment contained in paragraph 2, as it is recognized that a foreign public official cannot "unintentionally" solicit or accept a bribe.

28. The *travaux préparatoires* will indicate that paragraph 1 requires that States Parties criminalize active bribery of foreign public officials and paragraph 2 requires only that States Parties "consider" criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs is due to the fact that the core conduct addressed by paragraph 2 is already covered by article 15, which requires that States Parties criminalize the solicitation and acceptance of bribes by their own officials.

Article 17

29. The *travaux préparatoires* will indicate that this article is not intended to require the prosecution of *de minimis* offences.

30. The *travaux préparatoires* will indicate that the term "diversion" is understood in some countries as separate from "embezzlement" and "misappropriation", while in others "diversion" is intended to be covered by or is synonymous with those terms.

Article 19

31. The *travaux préparatoires* will indicate that this article may encompass various types of conduct such as improper disclosure by a public official of classified or privileged information.

Article 23

32. The *travaux préparatoires* will indicate that money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and that a prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 28, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances.

Article 27

Paragraph 1

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

Article 30

Paragraph 2

34. The *travaux préparatoires* will indicate the understanding that the appropriate balance referred to in this paragraph would be established or maintained in law and in practice.

Paragraph 4

35. The *travaux préparatoires* will indicate the understanding that the expression "pending trial" is considered to include the investigation phase.

Article 31

Paragraph 5

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

Article 35

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

38. The *travaux préparatoires* will indicate that this article is intended to establish the principle that States Parties should ensure that they have mechanisms permitting persons or entities suffering damage to initiate legal proceedings, in appropriate circumstances, against those who commit acts of corruption (for example, where the acts have a legitimate relationship to the State Party where the proceedings are to be brought). While article 35 does not restrict the right of each State Party to determine the circumstances under which it will make its courts available in such cases, it is also not intended to require or endorse the particular choice made by a State Party in doing so.

Article 36

39. The *travaux préparatoires* will indicate that the body or bodies referred to in this article may be the same as those referred to in article 6.

Article 41

40. The *travaux préparatoires* will indicate that the term "conviction" should be understood to refer to a conviction no longer subject to appeal.

Article 42

Paragraph 1

Subparagraph (a)

41. The *travaux préparatoires* will reflect the understanding that the offence might be committed in whole or in part in the territory of the State Party.

Chapter IV

Article 46

Paragraph 9

Subparagraph (b)

42. The *travaux préparatoires* will indicate that the requested State Party would define "coercive action", taking into account the purposes of the Convention.

Paragraph 19

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

Paragraph 28

44. The *travaux préparatoires* will indicate that many of the costs arising in connection with compliance with requests made pursuant to article 46, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. Further, the *travaux préparatoires* will also indicate the understanding that developing countries might encounter difficulties in meeting even some ordinary costs and should be provided with appropriate assistance to enable them to meet the requirements of this article.

Article 48

Paragraph 1

Subparagraph (b) (i)

45. The *travaux préparatoires* will indicate that the term "identity" should be understood to include such features or other pertinent information as might be necessary to establish a person's identity.

Subparagraph (d)

46. The *travaux préparatoires* will indicate that this subparagraph does not imply that the type of cooperation described therein would not be available under the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

Paragraph 3

47. The *travaux préparatoires* will indicate that, in considering a proposal made by Chile for a provision on jurisdiction and cooperation with regard to offences committed through the use of computer technology (A/AC.261/L.157 and Corr.1), there was general understanding that article 42, paragraph 1 (a), already covered the exercise of jurisdiction over offences established in accordance with the Convention that were committed using computers if all other elements of the offence were met, even if the effects of the offence occurred outside the territory of a State Party. In that regard, States Parties should also keep in mind the provisions of article 4 of the Convention. The second part of the proposal of Chile suggested that States Parties should note the possible advantage of using electronic communications in exchanges arising under article 46. That proposal noted that States Parties might wish to consider the use of electronic communications, when feasible, to expedite mutual legal assistance. However, the proposal also noted that such use might raise certain risks regarding interception by third parties, which should be avoided.

Chapter V

Article 51

48. The *travaux préparatoires* will indicate that the expression "fundamental principle" would not have legal consequences on the other provisions of this chapter.

Article 52

Paragraph 1

49. The *travaux préparatoires* will indicate that paragraphs 1 and 2 should be read together and that the obligations imposed on financial institutions may be applied and implemented with due regard to particular risks of money-laundering. In that regard, States Parties may guide financial institutions on appropriate procedures to apply and whether relevant risks require application and implementation of these provisions to accounts of a particular value or nature, to its own citizens as well as to citizens of other States and to officials with a particular function or seniority. The relevant initiatives of regional, interregional and multilateral organizations against

money-laundering shall be those referred to in the note to article 14 in the *travaux préparatoires*.

50. The *travaux préparatoires* will indicate that the term "close associates" is deemed to encompass persons or companies clearly related to individuals entrusted with prominent public functions.

51. The *travaux préparatoires* will indicate that the words "discourage or prohibit financial institutions from doing business with any legitimate customer" are understood to include the notion of not endangering the ability of financial institutions to do business with legitimate customers.

Paragraph 2

Subparagraph (a)

52. The *travaux préparatoires* will indicate that the obligation to issue advisories may be fulfilled by the State Party or by its financial oversight bodies.

Paragraph 3

53. The *travaux préparatoires* will indicate that this paragraph is not intended to expand the scope of paragraphs 1 and 2 of this article.

Paragraph 4

54. The *travaux préparatoires* will indicate that the term "physical presence" is understood to mean "meaningful mind and management" located within the jurisdiction. The simple existence of a local agent or low-level staff would not constitute physical presence. Management is understood to include administration, that is, books and records.

55. The *travaux préparatoires* will indicate that banks that have no physical presence and are not affiliated with a regulated financial group are generally known as "shell banks".

Article 53

Subparagraph (c)

56. The *travaux préparatoires* will indicate that, during the consideration of this paragraph, the representative of the Office of Legal Affairs of the Secretariat drew the attention of the Ad Hoc Committee to the proposal submitted by his Office, together with the Office of Internal Oversight Services and the United Nations Office on Drugs and Crime (see A/AC.261/L.212) to include in this paragraph a reference to the recognition of the claim of a public international organization in addition to the recognition of the claim of another State Party. Following discussion of the proposal, the Ad Hoc Committee decided not to include such a reference, based upon the understanding that States Parties could, in practice, recognize the claim of a public international organization of which they were members as the legitimate owner of property acquired through conduct established as an offence in accordance with the Convention.

Article 54

Paragraph 1

Subparagraph (a)

57. The *travaux préparatoires* will indicate that the reference to an order of confiscation in paragraph 1 (a) of this article may be interpreted broadly, as including monetary confiscation judgements, but should not be read as requiring enforcement of an order issued by a court that does not have criminal jurisdiction.

Subparagraph (b)

58. The *travaux préparatoires* will indicate that paragraph 1 (b) of this article shall be interpreted as meaning that the obligation contained in this provision would be fulfilled by a criminal proceeding that could lead to confiscation orders.

Subparagraph (c)

59. The *travaux préparatoires* will indicate that, in the context of paragraph 1 (c) of this article, the term "offender" might in appropriate cases be understood to include persons who may be title holders for the purpose of concealing the identity of the true owners of the property in question.

Paragraph 2

Subparagraph (a)

60. The *travaux préparatoires* will indicate that the term "sufficient grounds" used in paragraph 2 (a) of this article should be construed as a reference to a prima facie case in countries whose legal systems employ this term.

61. The *travaux préparatoires* will indicate in relation to paragraph 2 (a) of this article that a State Party may choose to establish procedures either for recognizing and enforcing a foreign freezing or seizure order or for using a foreign freezing or seizure order as the basis for seeking the issuance of its own freezing or seizure order. Reference to a freezing or seizure order in paragraph 2 (a) of this article should not be construed as requiring enforcement or recognition of a freezing or seizure order issued by an authority that does not have criminal jurisdiction.

Article 55

62. The *travaux préparatoires* will indicate that references in this article to article 31, paragraph 1, should be understood to include reference to article 31, paragraphs 5-7.

Paragraph 1

63. The *travaux préparatoires* will indicate that the term "instrumentalities" should not be interpreted in an overly broad manner.

Paragraph 3

Subparagraph (a)

64. The *travaux préparatoires* will indicate that the statement of facts may include a description of the illicit activity and its relationship to the assets to be confiscated.

Paragraph 7

65. The *travaux préparatoires* will reflect the understanding that the requested State Party will consult with the requesting State Party on whether the property is of *de minimis* value or on ways and means of respecting any deadline for the provision of additional evidence.

Article 57

Paragraph 1

66. The *travaux préparatoires* will indicate that prior legitimate ownership will mean ownership at the time of the offence.

Paragraph 2

67. The *travaux préparatoires* will indicate that return of confiscated property may in some cases mean return of title or value.

68. The *travaux préparatoires* will indicate that the domestic law referred to in paragraph 1 and the legislative and other measures referred to in paragraph 2 would mean the national legislation or regulations that enable the implementation of this article by States Parties.

Paragraph 3

Subparagraphs (a) and (b)

69. The *travaux préparatoires* will indicate that subparagraphs (a) and (b) of paragraph 3 of this article apply only to the procedures for the return of assets and not to the procedures for confiscation, which are covered in other articles of the Convention. The requested State Party should consider the waiver of the requirement for final judgement in cases where final judgement cannot be obtained because the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

Paragraph 4

70. The *travaux préparatoires* will indicate that "reasonable expenses" are to be interpreted as costs and expenses incurred and not as finders' fees or other unspecified charges. Requested and requesting States Parties are encouraged to consult on likely expenses.

Article 58

71. The *travaux préparatoires* will indicate that each State Party may consider creating a new financial intelligence unit, establishing a specialized branch of an existing financial intelligence unit or simply using its existing financial intelligence

unit. Further, the *travaux préparatoires* will indicate that this article should be interpreted in a manner consistent with paragraph 1 (b) of article 14 of the Convention.

Chapter VI

Article 62

Paragraph 2

Subparagraph (c)

72. The *travaux préparatoires* will indicate that this subparagraph is not intended to prejudice the application of article 57.

Chapter VII

Article 63

Paragraph 3

73. The *travaux préparatoires* will indicate that financing should not be linked to the recovery of assets.

Paragraph 7

74. The *travaux préparatoires* will indicate that nothing in this paragraph is intended to limit the discretion of the Conference of the States Parties as the only forum competent to consider whether the mechanism or body to assist in the effective implementation of the Convention is necessary.

Chapter VIII

Article 67

Paragraph 2

75. The *travaux préparatoires* will indicate that "regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under the Convention shall apply to such organizations within the limits of their competence.