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Ad Hoc Committee for the Negotiation of a Convention against Corruption

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Agenda item 3

Consideration of the draft United Nations Convention against Corruption

Report on the informal consultations on the revised draft United Nations Convention against Corruption

Chapter II

1. The Ad Hoc Committee for the Negotiation of a Convention against Corruption devoted the informal consultations held from 14 to 20 March 2003 to consideration of chapters II and V of the revised draft United Nations Convention against Corruption, with a view to facilitating its further deliberations and action on the provisions contained in those chapters.
2. The informal consultations on chapter II entitled "Preventive measures" were held on 14 and 17 March 2003. The Vice-Chairman responsible for that chapter, who chaired the informal consultations, wishes to bring the results of those consultations to the attention of the Ad Hoc Committee for its consideration of the chapter at its sixth session. The revised text of articles 4 bis, 5, 5 bis, 6, 6 bis and 7 are contained in the annex to the present document.



Annex

Text of chapter II, articles 4 bis, 5, 5 bis, 6, 6 bis and 7, of the revised draft United Nations Convention against Corruption

II. Preventive measures¹

[Article 4 bis²
[...]

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

Article 5 *Preventive anti-corruption policies*

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies. Those policies shall promote [integrity, accountability and good governance].

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption [and criminal acts related to corruption].

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to determining their adequacy to fight corruption [and criminal acts related to corruption].

4. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption [and criminal acts related to corruption].

Article 5 bis *Preventive anti-corruption bodies*

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

¹ Several delegations noted that a number of the preventive measures proposed (such as articles 5, 6, 11 and 12) might result in Governments performing tasks that traditionally lay within the responsibility of their constituent states. Accordingly, those delegations were of the view that the situation of federal states should be taken into account in the further development of those provisions.

² During the informal consultations, several delegations suggested that article 4 bis should be considered prior to discussing the other articles in chapter II of the draft convention. Other delegations objected to that proposal. The Vice-Chairman with responsibility for that chapter decided that article 4 bis would be discussed upon completion of the chapter as a whole.

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

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

*[Subparagraph (c) was deleted.]*³

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

[Subparagraph (e) was deleted.]

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

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

Article 6 Public sector

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

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

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

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

(d) That promote education and training programmes for public officials to enable them to meet the requirements for the correct, 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.

³ At the informal consultations, it was decided to delete subparagraph (c) on the understanding that it would be taken into account in the discussions on article 13 (Participation of society).

2. The existence of the systems referred to in paragraph 1 of this article shall not prevent States Parties from maintaining or adopting specific measures for disadvantaged groups.⁴

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

Article 6 bis
Elected public officials

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

Article 7
Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, behaviour that favours the promotion of integrity,⁵ honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

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

3. For the purposes of implementing the provisions of this article, States Parties shall, where appropriate and in accordance with the fundamental principles of their domestic legal systems, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials that appears in the annex to General Assembly resolution 51/59 of 12 December 1996.

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

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

6. Each State Party shall endeavour, where appropriate, in accordance with fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding,

⁴ During the informal consultations, the view was expressed that this paragraph should not appear in the text of the draft convention and would be more appropriately placed in the notes for the *travaux préparatoires* as clarification of paragraph 1 of this article.

⁵ One delegation held the view that paragraph 1 should be discussed in conjunction with paragraph (c) of article 1. Another delegation noted that no consensus had yet been reached on the inclusion of the word “integrity”, and that further discussion might therefore be required.

inter alia, employment, investments, assets and substantial gifts or benefits that may constitute a conflict of interest with respect to their functions as public officials.⁶

7. States Parties shall consider adopting, in accordance with fundamental principles of their domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

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