

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT
AGAINST CORRUPTION**

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AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT AGAINST CORRUPTION

I. INTRODUCTION

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25,) was desirable, decided to begin the elaboration of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention; requested the Secretary-General to prepare a report analyzing all relevant international instruments and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

2. In its resolution 55/188 of 20 December 2000, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the return of such funds to the countries of origin. Furthermore the General Assembly decided to establish an ad hoc Committee for negotiating of such an instrument.

3. In its resolution 2001/13 of 24 July 2001, the Economic and Social Council requested the intergovernmental open-ended expert group referred to in General Assembly resolution 55/61 to consider, within the context of its mandates, the following issues: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contribute to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering; and (d) determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

4. Pursuant to General Assembly resolution 55/61, the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001 and recommended to the Assembly, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the adoption of a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was subsequently adopted as Assembly resolution 56/260 of 31 January 2002.

5. In its resolution 56/260, the General Assembly decided that the ad hoc committee

established pursuant to resolution 55/61 should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the "United Nations Convention against Corruption."

6. In the resolution, the General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, *inter alia*, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

7. The General Assembly also invited the Ad Hoc Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption, as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice at its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2002/13 as resource materials in the accomplishment of its tasks.

8. The General Assembly requested the Ad Hoc Committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime; decided that the ad hoc committee should be convened in Vienna in 2002 and 2003, as required, and should hold no fewer than three sessions of two weeks each per year; requested the ad hoc committee to complete its work by the end of 2003.¹

9. Parallel to the negotiations within the United Nations, an Inter-governmental group, known as Global forum, has held three Ministerial level meetings so far to contributed to the efforts of the United Nations. The AALCO Secretary-General was invited to attend Global Forum II and III, which was held in the Hague (2001) and Seoul (2003), respectively.

10. This brief report provides a comprehensive **Overview of the UN Convention against Corruption** and the **High Level Political signing Conference, Merida**. The report also covers the negotiations at the Sixth and Seventh Session in Annexure. A comparative table on the modifications made in the draft and final text of the Convention by the Ad Hoc committee during the negotiating sessions is also included as Annexure.

¹ The resolution was produced by the expert group established by GA/Res/55/61 in accordance with the mandate created by that resolution and resolution 55/188. The expert group also took into consideration a resolution of the tenth session of the Commission for Crime Prevention and Criminal Justice setting out possible terms of reference dealing with the transfer of funds of illicit origin derived from corruption and the return of such funds. See E/2001/30, Draft Resolution II, titled: "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and returning such funds".

II. THE HIGH-LEVEL POLITICAL CONFERENCE FOR THE PURPOSE OF SIGNING THE UN CONVENTION AGAINST CORRUPTION, MERIDA, MEXICO, 9-11 DECEMBER 2003

11. The High-level Political Conference for the purpose of signing the UN Convention against Corruption was held in Merida, Mexico on 9 to 11 December 2003. 111 States were represented at the Conference. Apart from States, observers from United Nations Secretariat units, and other entities and specialized agencies of the United Nations system and intergovernmental or non-governmental organization also attended the Conference. Over 18 experts participated in the conference as observers. **Ambassador Dr. Ali Reza Deihim, Deputy Secretary-General**, represented the AALCO Secretariat and delivered a statement on behalf of AALCO in the plenary session.

12. The conference was opened on 9 December 2003 by the President of the United Mexican States and by the Under-Secretary-General for Legal Affairs, the Legal Counsel, who delivered a message on behalf of the UN Secretary General.²

13. 95 Ministers, Attorney Generals, or other dignitaries, having full power to sign, signed the UN Convention against Corruption at the Conference.³ One International Economic Organization also signed the Convention. Of the 95 States signatories to the Convention, 22 were AALCO Member States. They are:

China, Cyprus, Egypt, Islamic Republic of Iran, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Nepal, Nigeria, Pakistan, Philippines, Republic of Korea, Senegal, Sierra Leone, Syrian Arab Republic, Thailand, Turkey, Uganda, and United Republic of Tanzania.

In addition, three more AALCO Member States, **Indonesia, Libyan Arab Jamahiriya and Saudi Arabia** had signed the Convention after the Merida Conference; bring the total number of AALCO Member Countries, signatories to the Convention to 25.

² The Conference elected Luis Ernesto Derbez Bautista, as the President of the Conference. The Conference conferred on the representative of Colombia the position of Honorary President as a tribute to the memory of the late chairman of the Ad Hoc Committee, Hector Charry Samper (Colombia) and in recognition of his contribution to the advancement of the negotiation process. The Conference also decided that the rules of procedure of the General Assembly would apply, mutatis mutandis, to the proceedings of the Conference. At the 1st to 6th meeting, statements were delivered by the representatives of the States and Intergovernmental Organizations including AALCO.

³ The list of the signatories are as follows: Algeria, Angola, Argentina, Australia, Austria, Barbados, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, **China**, Colombia, Costa Rica, Cote d'Ivoire, Croatia, **Cyprus**, Denmark, Dominican Republic, Ecuador, **Egypt**, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Greece, Guatemala, Haiti, Hungary, Ireland, **Islamic Republic of Iran**, Italy, **Japan, Jordan, Kenya, Kuwait**, Kyrgyzstan, Lao People's Democratic Republic, Liechtenstein, Lithuania, Luxembourg, Comoros, Madagascar, **Malaysia**, Mali, **Mauritius**, Mexico, Morocco, Namibia, **Nepal**, Netherlands, New Zealand, Nicaragua, **Nigeria**, Norway, **Pakistan**, Panama, Paraguay, Peru, **Philippines**, Poland, **Republic of Korea**, Romania, Russian Federation, **Senegal, Sierra Leone**, Slovakia, South Africa, Sweden, Switzerland, **Syrian Arab Republic, Thailand**, Timor-Leste, Togo, **Turkey, Uganda**, United Kingdom of Great Britain and Northern Ireland, **United Republic of Tanzania**, United States of America, Uruguay, Venezuela, Viet Nam. States, which had signed the Convention after the Merida signing Conference, are: Albania, **Indonesia, Libya Arab Jhamahiriya and Saudi Arabia.**

14. It is remarkable that Kenya, one of our Member States, was the first country to deposit the instrument of ratification to the Conference. Indeed, it was the first time that a country had signed a UN Convention and deposited the instrument of ratification on the first day of a signing conference.

15. In order to discuss matters related to the Convention, the Government of Mexico, in consultation with Member States and in cooperation with the United Nations Office on Drugs and Crime, also organized four side events during the Conference. The side events were designed to offer additional opportunities to delegations, as well as to representatives of intergovernmental organizations, the private sector, civil society and the media, to exchange views about future action against corruption, especially in the context of implementation of the Convention.⁴ The four side event were on:

- (i) Preventive measures against corruption: the role of the private and public sectors
- (ii) The role of civil society and the media in building a culture against corruption
- (iii) Legislative measures to implement the United Nations Convention against Corruption
- (iv) Measures to fight corruption in national and international financial systems

16. The Convention shall enter into force on the 90th day after 30 nations have formally ratified it. The Convention has presently, 99 signatories and one party (Kenya).

Non-Governmental Organization's Reaction to the Merida-Mexico, Signing Conference

17. The significance of this accomplishment is made clear by recalling that two decades ago an effort to develop a UN Convention collapsed amidst bitter recriminations between industrialized and developing countries. Each blamed the other for the spread of corruption and refused to acknowledge a shared responsibility for combating corruption.

18. Corruption is now recognized as one of the greatest obstacles to development. Because corruption is a worldwide problem, global action under the UN Convention is imperative. The Convention provides a comprehensive framework for dealing with domestic and foreign bribery in the public and private sectors and for technical assistance and information exchange. It addresses glaring inadequacies in two of the most critical tools for combating international corruption: mutual legal assistance and repatriation of funds sent abroad by corrupt officials. It prohibits extortion by public officials, thereby complementing the effort of the 1997 OECD Convention, which prohibits companies from bribing foreign officials.

19. It does not provide a process to ensure effective implementation. The need for a follow-up monitoring process cannot be overstated. The failure to address this issue, and indeed to defer its consideration for several years, is the most serious shortcoming of the UN Convention. Governments

should face up to the need to start developing a monitoring process.

20. The Conference of States Parties is to be convened in the year after 30 countries have ratified the Convention. That alone would result in a delay of several years and cause a serious loss of momentum. Thereafter, substantial additional time will be required to reach agreement on an implementing process. To hammer out an acceptable implementation process, the process must deal not only with the adequacy of laws and enforcement programs, but with capacity-building measures needed to enable many of the parties to carry out effective anti-corruption programs.

21. A group of experts should be convened in 2004 with the task of developing monitoring proposals for consideration by the signatories in 2005. The objective should be to start the monitoring process promptly after the Convention enters into force. The group of experts should include representatives of the UN's Ad Hoc Committee for the Negotiation of the Convention and officials and non-governmental representatives experienced with the implementation programs of the existing conventions. The UN process, should take account of the lessons learned from these programs and explore opportunities for coordinating reviews and avoiding duplication.

22. Concerns have also been raised in the international business community that some provisions of the Convention are ambiguously worded, that many provisions are optional and that this could result in a patchwork of inconsistent requirements. Assurance that there will be a monitoring process would help to overcome business concerns.⁵

⁵

December 5, 2003. Peter Eigen is the founding Chairman of Transparency International. Fritz Heimann is Chairman of TI-USA.

III. CONSIDERATION OF THE ITEM DURING AALCO 42nd SESSION

23. It may be recalled that the AALCO's Legal Advisers Meeting held in New York on 20th November 2001, considered the topic of Corruption. The discussions focused on the ongoing negotiations within the United Nations. It was felt that the AALCO should consider taking up such an item at its forty-first session.

24. Taking into consideration the foregoing developments, the Secretary-General proposed for inclusion of an item entitled "An Effective International Legal Instrument Against Corruption" in the provisional agenda of the AALCO's 41st Session. This suggestion was in line with the Article 4(d) of the AALCO's Statutes which provides for exchange of views and information on matters of common concern having legal implications. It was felt that the AALCO could make useful contributions to the negotiations concerning the international convention for preventing and combating corruption. In order to facilitate consideration of this topic, the Secretariat prepared a Preliminary Study which highlighted the progress made within the United Nations. The initiative taken by the Secretary-General was welcomed and the item was discussed at the AALCO's 41st Session held in Abuja, Nigeria (2001).⁶

25. At the 42nd Session of AALCO held in Seoul, Republic of Korea from 16-20 June 2003, Deputy Secretary-General Amb. Dr. Ali Reza Deihim gave a report on the ongoing efforts to develop an effective legal instrument against corruption. He noted that corruption is not restricted to one region, and is present even in the most developed countries. He outlined the progress in the drafting of the Convention against Corruption by the ad hoc committee established by the UN General Assembly, but noted that there are still differences of opinion in a number of areas.

26. Delegations from Iran, Kenya, Nepal, Thailand, Indonesia, Pakistan, Republic of Korea, Malaysia, the United Republic of Tanzania and Nigeria expressed their support for the draft Convention, and the need to prevent and suppress corruption. Many delegations outlined the measures being undertaken in their own countries to combat corruption. Delegations commented on the need to deal with some of the outstanding issues, including the definition of terms such as "corruption" and "public official", the scope of offences, asset recovery, inclusion of private sector corruption, monitoring mechanisms and the need for international cooperation. Some delegations requested that AALCO actively follow the progress of the negotiations on the draft Convention, as well as stressing the need for AALCO's position on the Convention to be well articulated at the forthcoming meeting of the ad hoc committee in Vienna.

27. A Resolution was adopted urging the Member States to actively participate in the work of the Ad Hoc Committee and mandating the AALCO to continue monitor the developments in the drafting of the UN Convention against Corruption.

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The Resolution adopted at that session urged the Member States to actively participate in the work of the Ad Hoc Committee

IV. THE UN CONVENTION AGAINST CORRUPTION: AN OVERVIEW

A. INTRODUCTION

28. The Ad Hoc Committee established by the UN General Assembly in 2000 conducted seven hectic negotiating sessions and within 2-year time finalized the text of the comprehensive Convention against Corruption. The Ad Hoc Committee, in its process of negotiations, had made numerous modifications, such as insertion of Embezzlement of property in private sector, the deletion of funding of political parties and accounting standards, the controversial Monitoring Mechanism, to mention a few, throughout the negotiating phase of the Convention.

29. The final adopted text of the UN Convention against Corruption has been divided in to eight Chapters and 71 articles. The major Chapters include General Provisions, Preventive Measures, Criminilization and Law Enforcement, International Cooperation and Asset Recovery. An analysis of the important provisions of the Convention is highlighted below.⁷ Though the Ad Hoc Committee had also prepared an Interpretative notes for the official records (*travaux préparatoires*) to facilitate the common understanding of some provisions and terms used in this Convention, no action was taken by General Assembly concerning this document. However, this report has incorporated this explanatory notes in footnotes.

B. PREAMBLE

30. The preamble recognizes the seriousness of problems posed by corruption, which endanger the stability and security of societies, undermine the values of democracy and jeopardize social, economic and political development. It also recognizes the link between corruption and in particular organized crime and economic crime, including money-laundering and convinced that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, is determined to prevent, detect and deter in a more effective manner international transfers of assets illicitly acquired by public officials and to recover such assets on behalf of victims of crime and legitimate owners.

C. GENERAL PROVISIONS (Chapter I)

Purpose (Article 1)

31. The main purposes of this Convention are:

- to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- to promote integrity, accountability and proper management of public affairs and public property.

⁷

The analysis is mainly based on the revised Convention after the second reading (document no. A/AC.261/3/Rev.5 and A/58/422).

Definitions (Use of Terms)⁸

(a) Public Official

32. The Convention defines a ‘public official’ (art. 2 (a)) to mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, (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 (iii) any other person defined as a “public official” in the domestic law of a State Party.

(b) Foreign public official

33. The Convention defines a “foreign public official” (art.2(b)) to include any person holding a legislative, executive or administrative or judicial office of a foreign State, whether appointed or elected and any other person performing a public function for a foreign country, including for a public agency or public enterprise.

(c) Official of a public international organization

34. The Convention defines “official of a public international organization” (art.2(c)) to mean any international civil servant or any person who is authorized by such an organization to act on behalf of that Organization.⁹

(d) Property

35. The Convention defines “property” (art.2(d)) to mean assets of every kind, whether corporal 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

36. The Convention defines “proceeds of crime” (art.2(e)) to mean any property derived from or obtained, directly or indirectly, through the commission of an offence.

(f) Freezing or Seizure

37. The Convention defines “freezing or seizure” (art.2(f)) to mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority and for a renewable period of not more than six months.

(g) Confiscation

⁸ In the course of the negotiation of the Corruption, the Ad Hoc Committee decided not to include the meanings of the terms such as: Public function; Public international organization; Corruption⁸; Public function; Illicitly acquired assets International organization; Legal person; Preventive measures; Act of corruption; Transfer of assets derived from acts of corruption; Repatriation of funds, suspected transaction; recovery of assets; illicit enrichment; conflict of interest; money-laundering; Recovery of assets and Affected State Party; private official; effective collaborator; requested state; and requesting state. In the case of the definition of ‘Corruption’ it may be recalled that there were differences in approach adopted by the participants in the negotiation. One option, based on the proposals made by Ukraine, adopts a general approach to the definition of “corruption”. On the other hand, the second option, which was based on the proposal from Botswana and Pakistan, is restrictive in nature. The major difference among the participants was, whether to include a definition of corruption or not. Finally it was decided not to include the meaning of the term “corruption”. A/AC.261/3/Rev.3

⁹ China in its submission expressed a preference for a more restrictive definition, limited to international civil servants.

38. The Convention defines “confiscation” (art.2(g)) to mean the permanent deprivation of property by order of a court or other competent authority.

(h) Predicate offence

39. The Convention defines “predicate offence” (art.2(h)) as 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

40. The Convention defines “controlled delivery” (art.2(i)) to 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.

Scope of Application of the Convention (Article 3)

41. Article 3 states that the Convention shall apply to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences. For the purpose 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.

Protection of Sovereignty (Article 4)

42. States Parties of this Convention shall carry out their obligations in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention¹⁰ in the domestic affairs of other States. 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.

D. CHAPTER II: PREVENTIVE MEASURES

43. The preventive anti-corruption measures that need to be adopted under this Convention can broadly be applicable to Public and Private Sector. Under the Public Sector, the preventive measures shall include Code of conduct for public officials, public procurement and management of public finance, public reporting (transparency in public administration), and judiciary and prosecution. In the case of private sector, the measures shall include prevention of money laundering and participation of civil society.¹¹

44. This Chapter deals with the preventive measures that have to be undertaken by the State parties to the Convention. For this purpose, the Convention mandates the Members to develop and implement or maintain effective, coordinated anti-corruption policies and to

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.

¹¹ The provisions dealing with “Funding of political parties” (public sector) and “Accounting standards (private sector)” was deleted by the Ad Hoc Committee. However, a diluted version of deleted Article 10 (Funding of Political Parties) was incorporated in paragraph 3 of Article 7 (Public Sector).

establish and promote effective practices aimed at the prevention of corruption. States Parties shall also collaborate with each other and with relevant international and regional organizations in promoting and developing the preventive measures (Article 5).

45. Further, each State Party shall ensure the existence of Preventive anti-corruption body(ies) with necessary independence, to enable the body(ies) to carry out its functions effectively and free from any undue influence. The name and address of such authority authorities shall be communicated to the Secretary-General of the UN (Article 6).

Corruption in Public Sector (Article 7)

46. The part provides for the general domestic obligation of the State parties to take preventive measures in public sector. The Convention mandates each State Party to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants that are:

- based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- adequate procedures for the selection and training of individuals for public positions;
- promote adequate remuneration and equitable pay scales; and
- promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions.

The States parties shall adopt appropriate legislative and administrative measures to prescribe criteria concerning candidature for and election to public office and endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. Each State Party shall also consider taking appropriate legislative and administrative measures, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

Code of conduct for public officials (Article 8)

47. The implementing State shall promote, *inter alia*, integrity, honesty and responsibility among its public officials and endeavour to apply, codes or standards of conduct for the correct, honourable and proper performance of public functions. The State parties shall also establish measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities and 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. Each State Party shall consider taking disciplinary or other measures against public officials who violate the codes or standards established.

Public procurement and management of public finances (Article 9)

48. The State Parties shall take 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. The measures shall involve:

- The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and on the award of contracts; and
- conditions for participation, including selection and award criteria and tendering rules.

Public reporting (Article 10)

49. Each State Party shall take such measures to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making process. This may involve, among others:

- adopting procedures or regulations to obtain information on the organization, functioning and decision-making processes of its public administration; and
- Simplification of administrative procedures.

Measures relating to the judiciary and prosecution services (Article 11)

50. Each State Party shall 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 and within the prosecution service.

Corruption in Private Sector (Article 12)

51. This part provides for the general domestic obligation of the State Parties to take preventive measures in private sector. It provides for undertaking effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures including, *inter alia*:

- Promoting codes of conduct for the correct, honourable and proper performance of the activities of business relevant professions and the prevention of conflicts of interest, and use of good commercial practices among businesses and in the contractual relations of businesses with the States;
- Preventing the misuse of procedures regarding subsidies and licences granted by public authorities for commercial activities;
- Preventing conflicts of interest by imposing restrictions 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; and
- Ensuring that private enterprises to have sufficient internal auditing controls to assist in preventing and detecting acts of corruption.

The State Parties, in order to prohibit the following acts carried out for the purpose of committing any of the offences, shall establish: off-the-books accounts; the recording of non-existent expenditure; the use of false documents etc. Further, each State Party shall disallow the tax deductibility of expenses that constitute bribes.

Participation of society (Article 13)

52. This provision is intended 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. The participation should be strengthened by measures such as:

- undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. However, this freedom may be subject to certain restrictions such as rights or reputations of others and protection of national security or order public or of public health or morals.

Measures to prevent money-laundering (Article 14)

53. Each State Party, in order to prevent money-laundering, shall 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 other bodies,¹² in order to deter and detect all forms of money-laundering, which shall emphasis requirement for record-keeping and the reporting of suspicious transaction.¹³

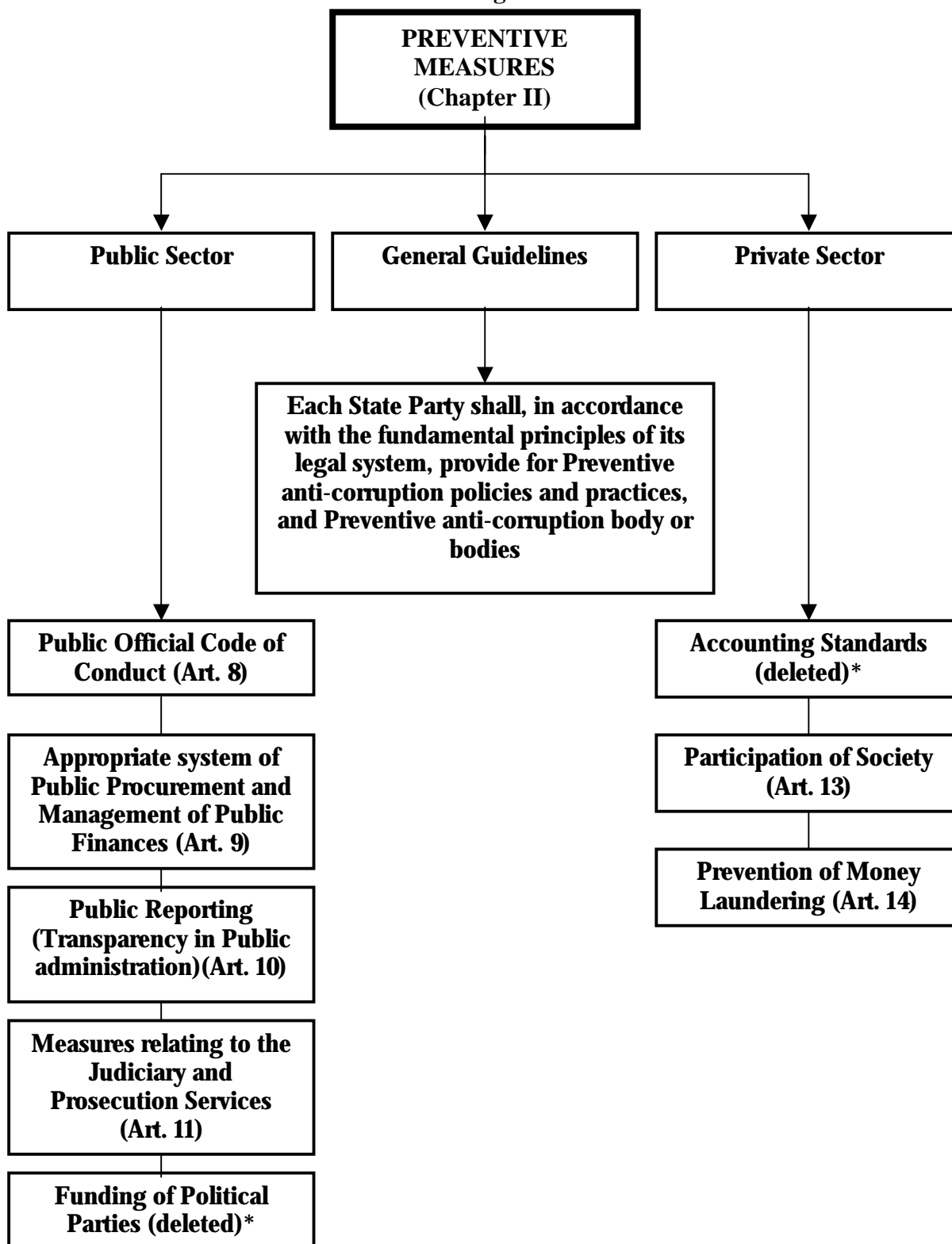
The State Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law. For this purpose, it 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.

The State Party shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments. In establishing a domestic regulatory and supervisory regime, the States Parties are called upon to use as a guideline the relevant initiatives of regional, inter-regional and multilateral organizations against money-laundering. Further, the State Parties shall also endeavour to develop and promote global, regional, sub-regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

¹² . The *travaux préparatoires* will indicate that the words “other bodies” may be understood to include intermediaries, which in some jurisdictions may include stock-broking firms, other securities dealers, currency exchange bureaux or currency brokers.

¹³ 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.

Fig. 1*



* Deleted at the fifth and Sixth Session. A diluted version of deleted Article 10 (Funding of Political Parties) was incorporated in paragraph 3 of Article 7 (Public Sector).

E. CHAPTER III: CRIMINALIZATION AND LAW ENFORCEMENT

54. The chapter on ‘Criminilization and Law Enforcement’ provides for criminilization of corrupt acts both in public and private sectors, as well as individual responsibilities. Criminilization in public sector includes Bribery of national and foreign public officials, including officials of public international organizations; Embezzlement, misappropriation or other diversion of property; Trading in Influence; Abuse of functions; Illicit enrichment etc., and criminilization in the private sector includes, Bribery, Embezzlement of property, Laundering of proceeds of crime, are among the issues dealt with at length. The provisions concerning ‘law enforcement’ include Prosecution, jurisdiction, effective regulation for administration of Justice, and cooperation at the national level for law enforcement.¹⁴

Bribery of national public officials (Article 15)

55. This article requires each State Party to adopt legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- To promise, offering or giving, to a public officials, 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;
- 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.

Bribery of foreign public official and officials of Public international organizations (Article 16)¹⁵

56. Article 16 requires each State Party to adopt measures as may be necessary to establish as criminal offences, when committed intentionally: the promise, offering or giving, or solicitation or acceptance by a foreign public official or an official of a public international organization to a foreign public, 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.^{16 17 18}

¹⁴ Recognizing that corruption in political party funding is a worldwide problem, the draft Convention had required each State Party to adopt, maintain and strengthen measures and regulations concerning the funding of political parties. Such regulations and measures should serve to prevent conflicts of interest; preserve the integrity of democratic political structures and processes; proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit. Views expressed by the delegations continued to diverge in this article, with number of delegations suggesting its deletion. Several delegations, questioned whether negotiation of such a provision would be practical in the context of the future convention, given the enormous variations in political systems. For those reasons, a number of delegations felt that the text should be placed in square brackets to signal the need for the Ad Hoc Committee to decide whether to retain the article. One delegation, further, suggested that, if this article were retained, it would necessitate a definition of the term “political party”. Finally, it was deleted in the sixth session of the Ad Hoc Committee.

¹⁵ 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.

¹⁶ 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.

Embezzlement, misappropriation or other diversion of property by a public official (Article 17)^{19 20}

57. Article 17 requires each State Party to adopt 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.

Trading in influence (Article 18)

58. Article 18 require each State Party to adopt legislative and other measures to establish as criminal offences, when committed intentionally: the promise, offering or giving, or solicitation or acceptance by 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.

Abuse of functions (Article 19)²¹

59. The Convention require each State Party to adopt legislative and other measures as may be necessary to establish as criminal offences, 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.

Illicit enrichment (Article 20)

60. Subject to the constitution and the fundamental principles of its legal system, each State Party shall adopt 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.²²

¹⁷ The *travaux préparatoires* will indicate that the phrase “the conduct of international business” is intended to include the provision of international aid.

¹⁸ While negotiating the Convention, some delegations in the Ad Hoc had expressed concerns about the potential effects of this article on expanding jurisdiction beyond that based on the principle of territoriality. Other delegations were of the view that any problems of that nature could be dealt with in the appropriate article. Some delegations expressed the view that the article might not be necessary, as the conduct it intended to cover could be punished under the article “corruption by national public officials”.

¹⁹ The *travaux préparatoires* will indicate that this article is not intended to require the prosecution of *de minimis* offences.

²⁰ The *travaux préparatoires* shall 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.

²¹ The *travaux préparatoires* shall indicate that the term encompass various types of conduct such as improper disclosure by a public official of classified or privileged information.

²² At the negotiating stage, the delegations of the Russian Federation, the Member States of the European Union and others had expressed their strong wish to delete this article. (A/AC.261/L.183)

Bribery in the private sector (Article 21)

61. Article 21 require each State Party to adopt legislative and other measures to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: the promise, offering or giving, or solicitation or acceptance, 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.²³

Embezzlement of property in the private sector (Article 22)

62. Each State Party shall consider 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.

Laundering of proceeds of crime (Article 23)²⁴

63. Each State Party shall, in accordance with fundamental principles of its domestic law, 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 counseling the commission of any of the offences established in accordance with this article.

²³ Saudi Arabia has proposed an amendment to article 32 in the fifth session which read: "Each State Party to adopt such legislative and other measures as may be necessary to establish as criminal offences, any act of corruption covered by this Convention when committed intentionally by any person who owns, directs or works in any capacity for a private sector entity"(A/AC.261/L.179). Japan, China, South Korea and many other countries expressed the view that the combat against corruption is the primary responsibility of the Member States and this Convention should not make any obstacle in the way of commercial and economic relations.

²⁴ 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 38 *ter*, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstance.

For the purpose of implementing or applying the above provision of this article, each State Party shall seek to apply to the widest range of predicate offences;

Concealment (Article 24)

64. The Convention require each State Party to consider adopting legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, after the commission of any of the offences, 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.

Obstruction of justice (Article 25)

65. Each State Party shall, in accordance with fundamental principles of its domestic law, establish as criminal offences, when committed intentionally:

- The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

Liability of legal persons (Article 26)

66. This provision provides for the adoption of such legislative or other measures, consistent with the State Parties legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. The liability of legal persons may be criminal, civil or administrative. The State Party shall also ensure that legal persons held liable are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Participation and attempt (Article 27)

67. Each State Party shall adopt such legislative and other measures necessary to establish as criminal offences:

- participation in any capacity such as an accomplice, assistant or instigator in an offence;
- any attempt to commit an offence established in accordance with the Convention;
- the preparation for an offence established in accordance with the Convention.

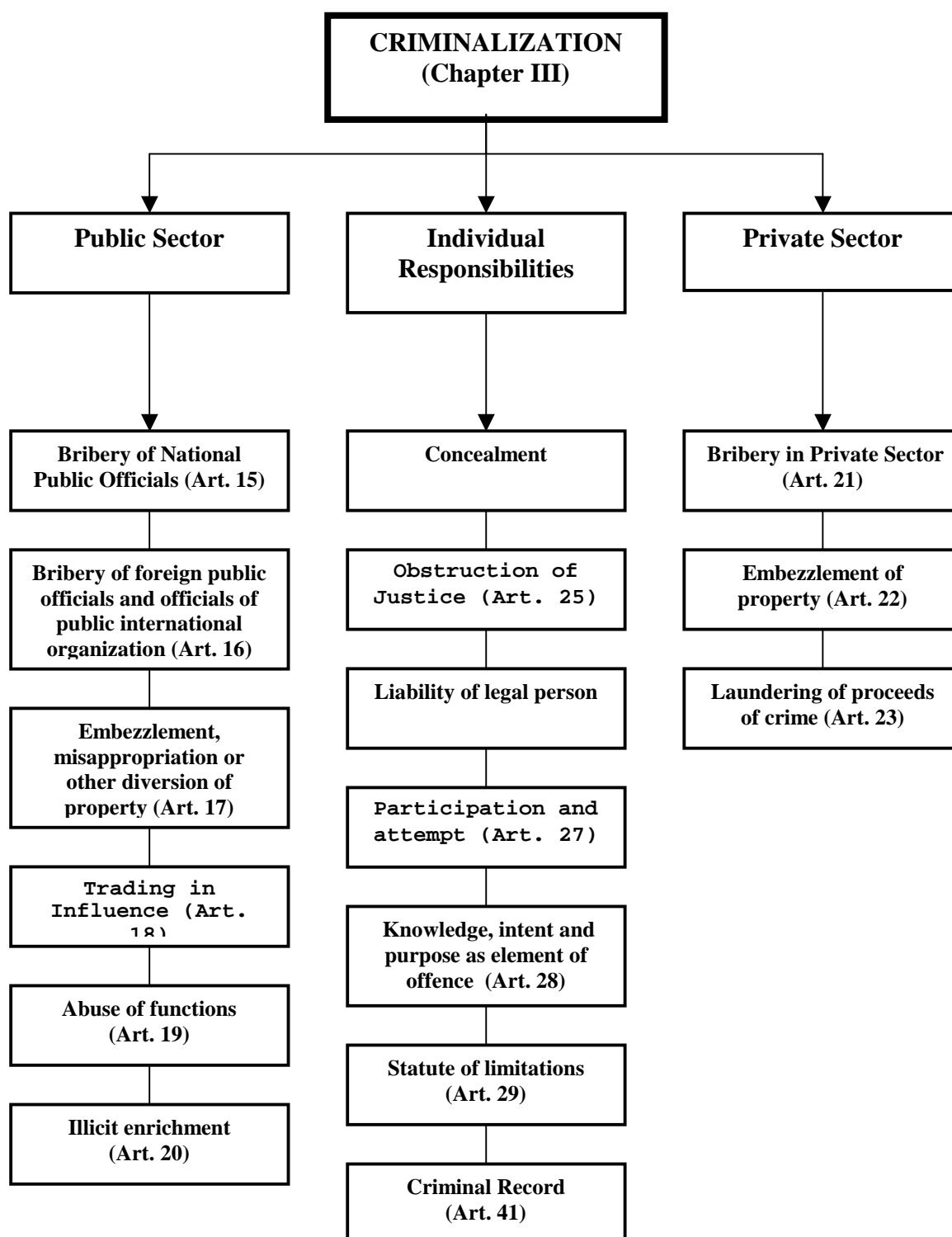
Knowledge, intent and purpose as elements of an offence (Article 28)

68. The knowledge, intent or purpose required as an element of an offence may be inferred from objective factual circumstances.

Statute of limitations (Article 29)

69. A long statute of limitations period in which to commence proceedings for any offence and a longer statute of limitations period for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice shall be provided in the domestic law.

Fig. 2



Prosecution, adjudication and sanctions (Article 30)

70. The commission of an offence established under the Convention shall be made liable to sanctions that takes into account the gravity of that offence. The State Party shall take such measures to establish or maintain 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.

The State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences. It shall take appropriate measures, with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial²⁵ or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

It shall consider establishing procedures through which a public official accused of an offence may be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

Where warranted by the gravity of the offence, each State party shall consider establishing procedures for the disqualification of persons convicted of an offence, for a period of time determined, from:

- holding public office; and
- holding office in an enterprise owned in whole or in part by the State.

Nothing contained in this Convention shall affect the principle that the description of the offences in 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.

Freezing, seizure and confiscation (Article 31)

71. Every State Party shall take, to the greatest extent possible within its domestic legal system, measures to enable confiscation of:

- Proceeds of crime derived from offences or property the value of which corresponds to that of such proceeds;
- Property, equipment or other instrumentalities used in or destined for use in offences covered under the Convention.

The State party shall take necessary measures to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 for the purpose of eventual

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The *travaux préparatoires* shall provide that the expression “pending trial” is considered to include the investigation phase.

confiscation and shall enact legislations to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime.

If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.²⁶

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

Courts or other competent authorities of the State Party shall be empowered to make available or seized bank, financial or commercial records. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

Protection of witnesses, experts and victims (Article 32)

72. Appropriate measures shall be taken to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences covered by this Convention, and as appropriate, for their relatives and other persons close to them. The measures may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

- Establishing procedures for the physical protection of such persons, such as, relocating them and permitting, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
- 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.

The States Parties shall consider entering into agreements or arrangements with other States for the relocation of such persons.

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.

Protection of reporting persons (Article 33)

73. The State Parties shall incorporate 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 covered by this Convention.

²⁶

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.

Consequences of acts of corruption (Article 34)

74. With due regard to the rights of third parties acquired in good faith, each States Party shall take measures 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.

Compensation for damage (Article 35)

75. This provision provides that measures shall be taken to ensure that entities or persons²⁷ 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.²⁸

Specialized authorities (Article 36)

76. Each State Party shall ensure the existence of a body(ies) or persons specialized in combating corruption through law enforcement. Such body(ies) or persons shall be granted the necessary independence to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body(ies) should have the appropriate training and resources to carry out their tasks.

Cooperation with law enforcement authorities (Article 37)

77. The State Party shall take appropriate measures to encourage persons who have participated in the commission of an offence 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.

To encourage supply of information, the State Party shall consider possibility for mitigating punishment and granting immunity from prosecution for an accused person who provides substantial cooperation in the investigation or prosecution of an offence

Cooperation between national authorities (Article 38)

78. Necessary measures shall be take to encourage cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences.

Cooperation between the national authorities and the private sector (Article 39)

79. Necessary measures shall be taken to encourage cooperation between the national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences.

²⁷ The *travaux préparatoires* shall provide that the expression “entities or persons” is deemed to include States, as well as legal and natural persons.

²⁸ The *travaux préparatoires* shall provide that this provision was not intended to restrict the right of a State Party to determine the circumstances under which it would make its courts available, including the right to determine whether to establish extraterritorial jurisdiction over acts referred to in the provision.

It shall also encouraging its nationals and other persons with habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of a offence.

Bank secrecy (Article 40)

80. 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.

Criminal record (Article 41)

81. Legislative or other measures shall be adopted to take into consideration any previous conviction²⁹ in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Jurisdiction (Article 42)

82. Measures shall be taken to establish jurisdiction over the offences under this Convention, when:

- the offence is committed in the territory of that State Party; or
- 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.

A State Party, subject to provision on protection of sovereignty, may also establish its jurisdiction over any such offence when:

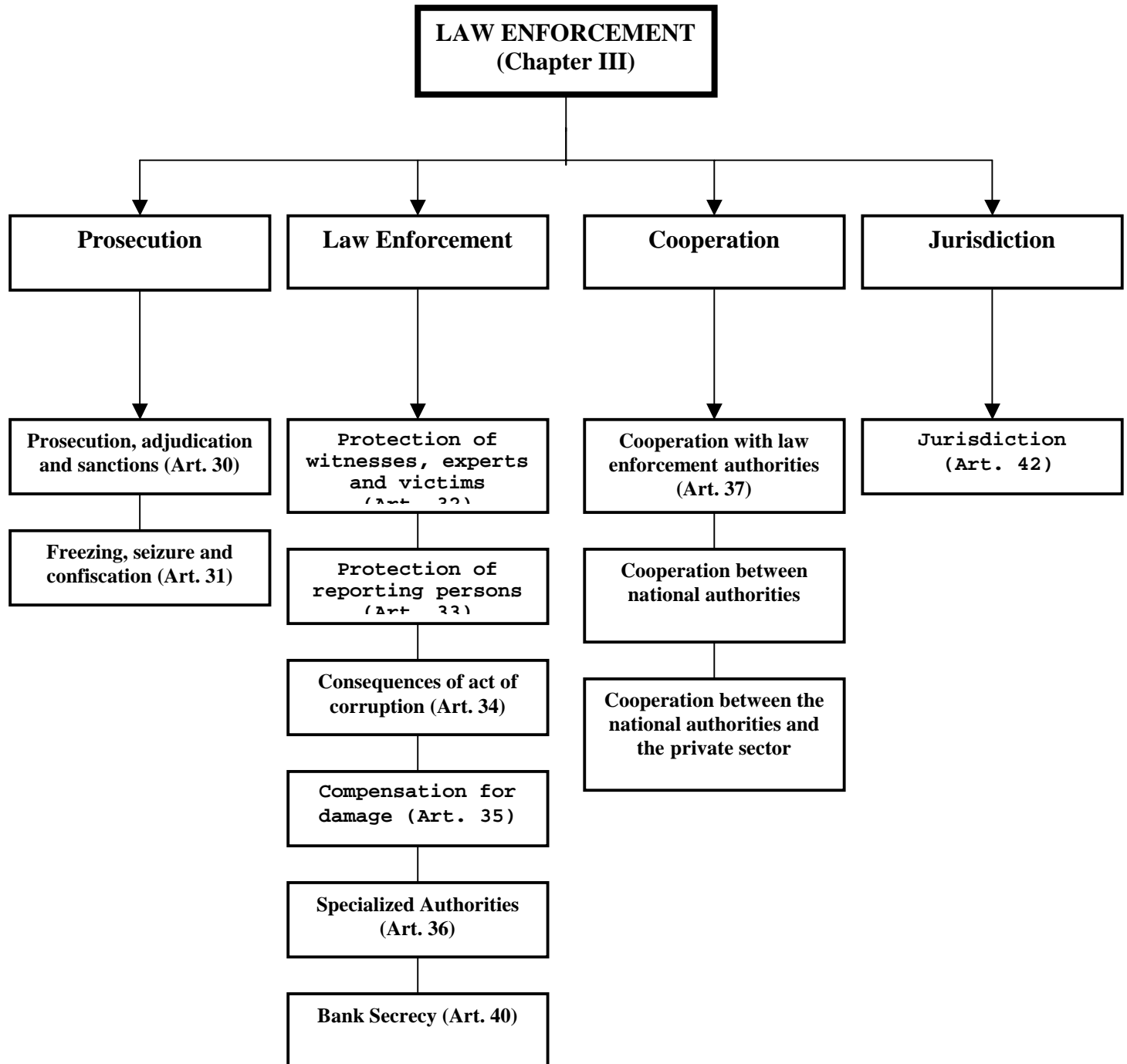
- the office is committed against a national of that State Party; or
- the offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
- the offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), 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
- the offence is committed against the State Party.

For the purpose of extradition, the State Party shall take measures to establish its jurisdiction over the offences 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. The State Party shall also take measures to establish its jurisdiction over the offences when the alleged offender is present in its territory and it does not extradite him or her.

²⁹ The *travaux préparatoires* shall indicate that the term “conviction” should be understood to refer to a conviction no longer subject of appeal.

If a State Party exercising its jurisdiction 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 consult one another with a view to coordinating their actions.

Fig. 3



F. CHAPTER IV: INTERNATIONAL COOPERATION

International Cooperation (Article 43)

83. Chapter IV “International Cooperation” provides for promoting and strengthening international cooperation for the effective law enforcement. Article 43 to 50 provides for international cooperation in criminal matters in the field of Extradition, transfer of sentenced person, mutual legal assistance, transfer of criminal proceedings, law enforcement, joint investigation and special investigation.³⁰ Where appropriate, the State Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

84. 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.

Extradition (Article 44)

85. Article 44 shall apply to the offence 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. However, a State Party may grant extraditions that are not punishable under its own domestic law.

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.

If a State Party that makes extradition conditional on the existence of a treaty may consider this Convention the legal basis for extradition in respect of any offence to which this article applies. The State Party that makes the extradition conditional on the existence of a treaty shall:

- 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
- If it does not take this Convention as the legal basis for cooperation on extradition, seek, to conclude treaties on extradition with other Parties to implement this article.

State 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. Extradition shall be subject to the conditions provided for by the domestic law of the

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Article 57 (other cooperation measures), was deleted at the fifth session of the Ad Hoc Committee.

requested State Party 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.

The requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, 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. If it does not extradite in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, it is obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.

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, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

If extradition is refused because the person sought is a national of the requested State Party, the requesting State Party shall consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof. The person extradited shall be guaranteed fair treatment at all stages of the proceedings.

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.

The State Parties may not refuse extradition on the sole ground that the offence is also considered to involve fiscal matters.

Transfer of sentenced persons (Article 45)

86. In the case of transfer of sentenced person, article 45 provides that 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 in order that they may complete their sentences there.³¹

Mutual legal assistance (Article 46)

87. Article 46 provides that the State parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. Mutual legal assistance shall be afforded in relation to the offences for which a legal person may be held liable under article 26.

Mutual legal assistance may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;

³¹ This provision was adopted by at the fifth session of the Ad Hoc Committee.

- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
- (j) Identifying, freezing and tracing the proceeds of offences covered by this Convention, in accordance with the provisions of Chapter V;
- (k) The recovery of assets, in accordance with the provisions of chapter V.

Mutual legal assistance shall not be decline on the ground of bank secrecy. However it may be declined on the ground of absence of dual criminality.

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 certain conditions.

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.

Each State Party shall designate a central authority, which 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 or execution. This would 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 State Parties agree, through international Criminal Police Organization.

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, *order 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.

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

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 States Party.

Transfer of criminal proceedings (Article 47)

88. The State Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence, where such transfer is considered to be in the interests of the proper administration of justice.

Law enforcement cooperation (Article 48)

89. States Parties shall cooperate closely with one another to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. For this purpose, the State Parties shall take measures, *inter alia*:

- To establish channel of communication between competent authorities;
- Cooperate in conducting enquiries concerning: the identify, whereabouts and activities of the offender; the movement of property, equipment or other instrumentalities used or intended for use in the commission etc;
- To provide necessary items or quantities of substances for analytical or investigative purposes;
- To exchange information.

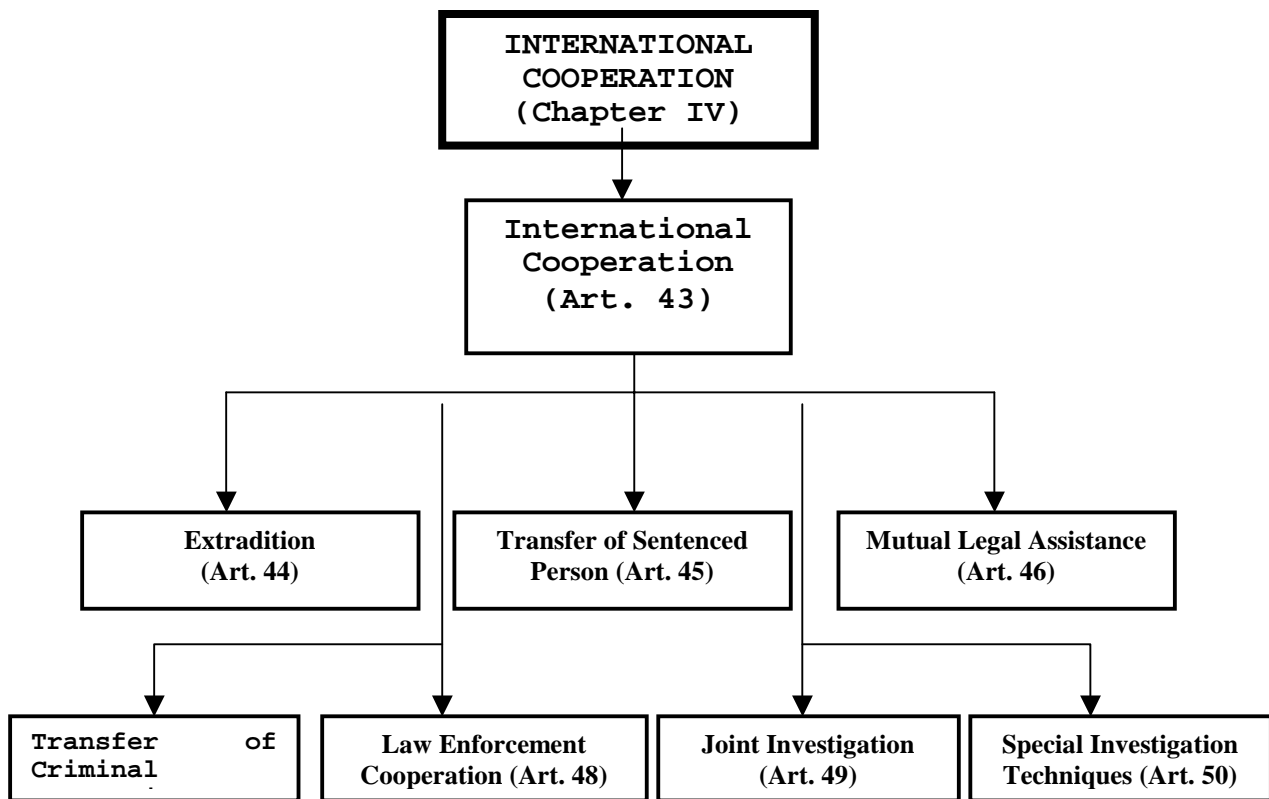
Joint investigations (Article 49)

90. Through bilateral and multilateral agreements or arrangements, the competent authorities concerned may establish joint investigative bodies in matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States.

Special investigative techniques (Article 50)

91. To compact corruption effectively, the State Party shall allow for the appropriate use by its competent authorities of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, and to allow for the admissibility in court of evidence derived there from.

Fig. 4



G. CHAPTER V: ASSET RECOVERY

92. Chapter V deals exclusively with ‘Asset Recovery’, which requires parties to return assets, obtained through corruption to the country where they were misappropriated. This Chapter provides for Prevention and detection of transfers of proceeds of crime; Measures for direct recovery of property; Mechanisms for recovery of property through international cooperation in confiscation; and Return and disposal of assets.

Accordingly, article 51 declares that ‘return of assets’ pursuant to chapter V as a fundamental principle of this Convention. This chapter proposes a comprehensive set of provisions seeking to ensure the widest measure of cooperation and assistance for the purposes of seizure, confiscation and disposal of funds derived from acts of corruption (Article 51).

Prevention and detection of transfers of proceeds of crime (Article 52)

93. Each State Party shall take such measures 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.³²

To prevent and detect transfer of illicitly acquired assets, the 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 presence³³ and that are not affiliated with a regulated financial group.

The State Parties shall consider establishing effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Its shall 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 crime. It shall also consider taking measures 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.

Measures for the direct recovery of property (Article 53)

94. Each State party shall take measures:

- (a) 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;
- (b) to permit its courts to order to pay compensation or damages to another State Party that has been harmed by such offences;
- (c) to permit its courts to recognize another State Party's claim as a legitimate owner of property acquired through commission of an offence.

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

95. In order to provide mutual legal assistance with respect to property acquired through or involved in an offence under this Convention, the State Parties shall take measures:

- (a) to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;³⁴
- (b) 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.

³² The *travaux préparatoires* will indicate that the expression “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.

³³ The *travaux préparatoires* will indicate that the expression “physical presence” is understood to mean meaningful mind and management” located within the jurisdiction. Management is understood to include administration, that is, books and records.

³⁴ 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 judgments, but should not be read as requiring enforcement of an order issued by a court that does not have criminal jurisdiction.

For this purpose, each state party shall 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.

International cooperation for purposes of confiscation (Article 55)

96. A request from another State Party for confiscation of proceeds of crime, property, equipment or other instrumentalities shall be given effect to the greatest extent possible. The requested state party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities. The copies of its laws and regulations, and subsequent changes if any, that give effect to this article shall be furnished to the Secretary-General of the United Nations.

If a State Party elects to make the taking of the measures conditional on the existence of a relevant treaty, that State Party shall consider this Convention as the necessary and sufficient treaty basis. Cooperation may be refused or provisional measures lifted if the requesting State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.³⁵ In case of lifting of any provisional measures, the requesting State Party shall be given an opportunity to present its reasons in favour of continuing the measure. This provision shall not be construed as prejudicing the rights of bona fide third parties.

Special Cooperation (Article 56)

97. Each State Party shall permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on illicitly acquired assets to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings.

Return and disposition of assets (Article 57)

98. Property confiscated by a State Party shall be disposed of, including by return to its prior legitimate owners. It shall enable competent national authorities to return confiscated property when acting on the request made by another State party.

Further the requested State Party shall, in the case of embezzlement of public funds or of laundering of embezzled public funds when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgment in the requesting State Party, return the confiscated property to the requesting State Party.³⁶

³⁵ The *travaux préparatoires* will reflect the understanding that the requesting State party will consult with the requesting State Party on whether the property is of *de minimis* value.

³⁶ The *travaux préparatoires* will indicate that the requested State Party should consider the waiver of the requirement for final judgment in cases where final judgment cannot be obtained because the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

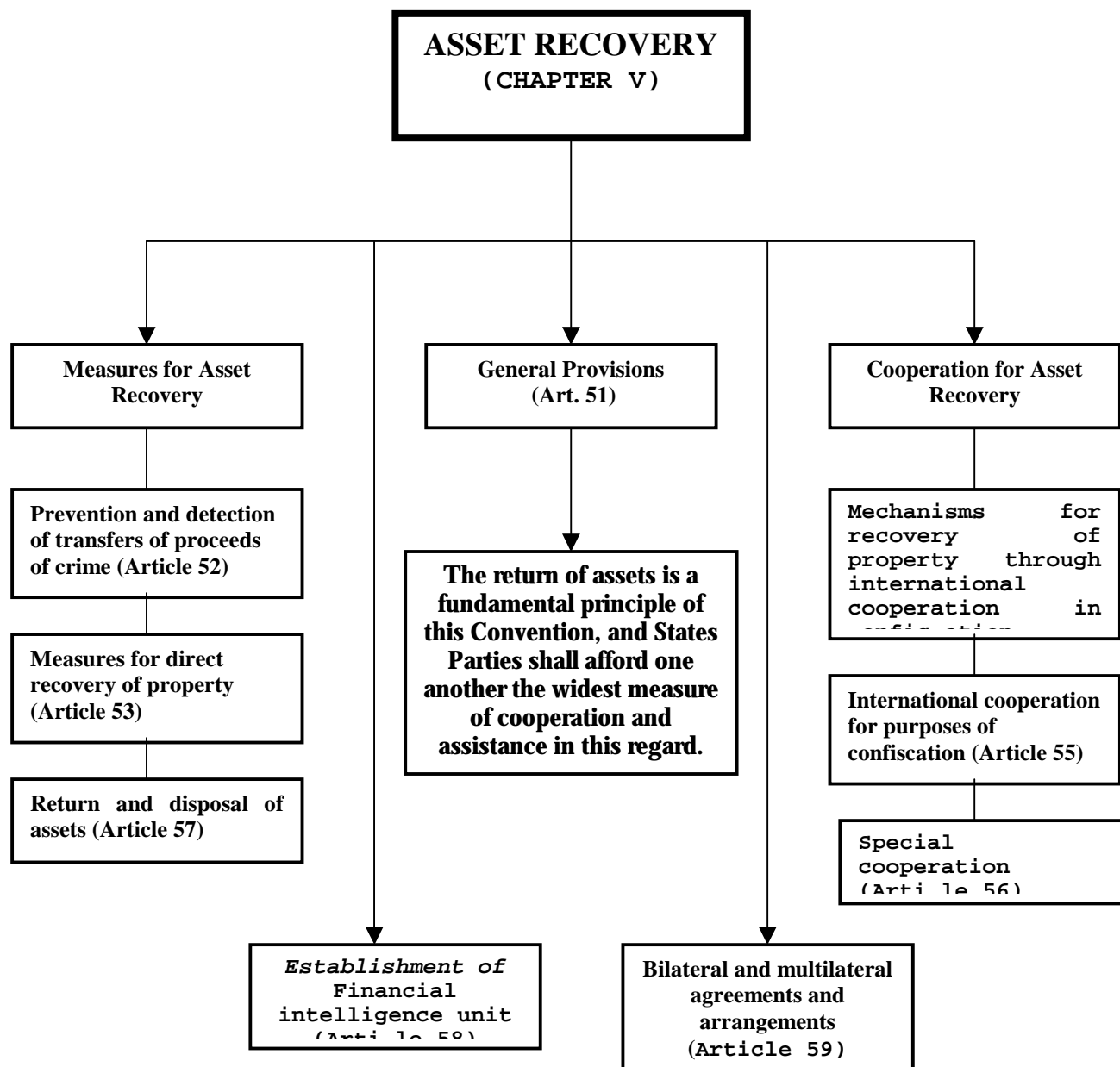
Financial intelligence unit (Article 58)

99. States Parties shall consider establishing a financial intelligence unit responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.

Bilateral and Multilateral agreements and arrangements (Article 59)

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

Fig. 5



H. CHAPTER VI: TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE

Training and technical assistance (Article 60)

101 Each State Party shall initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption, which may include *inter alia*, training in national and international regulations and in languages. It shall strengthen efforts to maximize operation and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

States Parties shall consider using subregional, region 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.

Voluntary mechanisms shall be established 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.

Each State Party shall consider making voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the Centre, programmes and projects in developing countries with a view to implementing this Convention.

Collection, exchange and analysis of information on corruption (Article 61)

102 Each State Party shall consider analyzing trends in corruption in its territory and shall consider and share with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar possible common definitions, standards and methodologies to prevent and combat corruption. It shall also monitor its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Other measures: implementation of the Convention through Economic development and technical assistance (Article 62)

103 All State Parties shall take measures conducive to the optimal implementation of this Convention through international cooperation. It shall coordinate with each other, as well as with international and regional organizations for the enhancement of cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption.

I. CHAPTER VII: MECHANISM FOR IMPLEMENTATION³⁷

104. An effective Mechanism is every important for the implementation of the Convention as experience with other international anti-corruption instruments shows that without a clear and effective mechanism for implementation such instruments are unlikely to achieve their stated objective.

105. Chapter VII of the Convention provides mechanism for implementation. Article 63 provides that a **Conference of State Parties to the Convention** shall be 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. The Conference of the States Parties shall be convened not later than one year following the entry into force of the Convention. The Conference of State Parties shall adopt rules of procedure including rules concerning the admission and participation of observers.

106. The Conference shall agree upon activities, procedures and methods of work to achieve the objectives such as cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations; and 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.

J. CHAPTER VIII: FINAL PROVISIONS

107. Each State Party may for the purpose of implementation, adopt stricter or severe measures than those provided for by this Convention for preventing and combating corruption (Article 65).

108. All disputes concerning the interpretation and application of the Convention shall be settled through negotiation. Any disputes that cannot be settled through negotiation shall be submitted to arbitration. If 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 (Article 66).³⁸

109. This Convention shall be open for signature not only to States but also to regional economic integration organizations. 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 (Article 67).

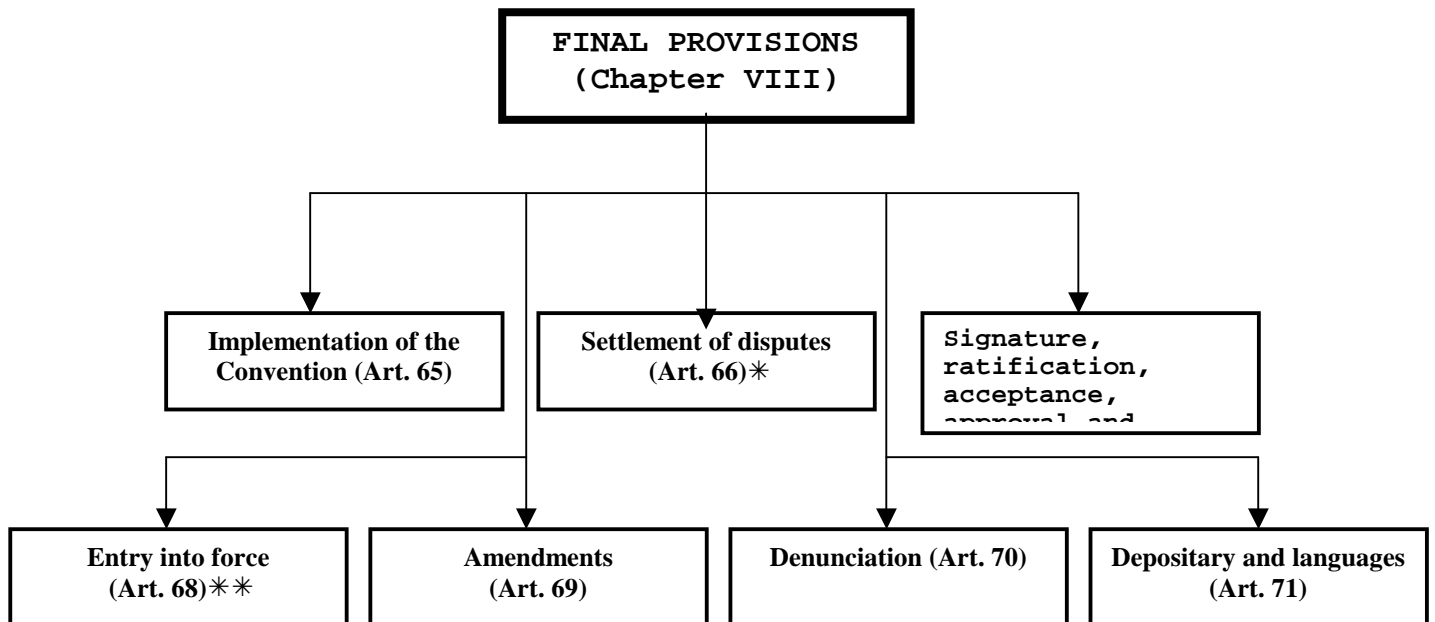
110. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession (Article 68). Any amendment to the Convention shall be made after the expiry of five years from the entry into force of the Convention and may be filed with the UN Secretary General who shall communicate the proposed amendment. In case of amendment, if no consensus is achieved, there is a requirement of two-third majority vote of the State Parties present and voting.

³⁷ The title of this chapter was changed to “Mechanism for Implementation” from “Mechanism for Monitoring of Implementation”.

³⁸ However, each State Party may, at the time of signature, ratification, acceptance, approval or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. At the time of signature in Meida-Mexico (9-11 December 2003), two States, Islamic Republic of Iran and Viet Nam made reservations.

Regional economic integration organizations shall exercise their right to vote on matters within their competence. It shall have that number of votes equal to the number of their member States that are parties to the Convention (Article 69).

Fig. 6



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- . All disputes shall be settled through negotiation or arbitration or by referring the dispute to the International Court of Justice. This article is subject to reservation.
 - . 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

V. GENERAL COMMENTS

1. Corruption is a global problem which poses serious threat to the development of a country. States, developed or developing, are equal victims of this problem. Corruption, apart from affecting the public at large, also causes reduced investment, social polarization, lack of respect for the rule of law and human rights, undemocratic practices and diversion of funds intended for development and essential services, affects government's ability to provide basic services to its citizens and to encourage sustainable economic, social and political development. Most importantly, corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

2. Establishing a legal framework at the national and international level to combat corruption is by no means an easy task. While many States have already embarked upon a national strategy to deal with corruption, the issue as a transnational crime poses many challenges. The different legal systems do not have the same notion about establishing "criminality" regarding corruption as a crime. The lack of effective cooperation in sharing of information and investigation, the complications in judicial assistance, bank secrecy regulation etc., are just few examples which pose problem of great magnitude.

3. More and more countries, having seen that bribery and cronyism have hold back development, had been asking the United Nations to help them gain the tools to curb such practices. As causes of corruption are different from one country to another, and preventive, enforcement and prosecutorial measures that work in some countries may not work in others, the United Nations, an organization with universal membership and a global mandate, is ideally positioned to deal with global challenges. Further, States have accepted the fact that corruption is a global phenomenon and mandated UN Office for Drug Control and Crime Prevention (ODCP) through the General Assembly to support the negotiation of the United Nations Convention against Corruption.

4. The Ad Hoc Committee entrusted with the drafting of the Convention finalized the text of a new international treaty, the United Nations Convention against Corruption at its seventh session. The consensus achieved in the UN General Assembly while adopting the Convention was reflective of its true global acceptance and application. The high-level Political Signing Conference of the UN Convention against Corruption held in Mexico on 9-11 December 2003 had opened the Convention for ratification. The Convention has provided a comprehensive tool and a definite step forward in the international effort to fight corruption. Its adoption marks the larger trend towards greater international regulation of corruption in public and private life.

Convention and definition of corruption

5. The United Nations Convention against Corruption is the first legally binding instrument with global scope of application. Keeping in view its global application, the Convention has taken the approach that a comprehensive definition of corruption was neither necessary nor feasible. Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept. The Convention is designed to function in a global environment. In light of those objectives, and in view of the multifaceted nature of the phenomenon and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge. The lack of

definition of corruption reflects the need to make this Convention agreeable and flexible. The Comprehensive Convention against Terrorism never materialized because of the question of definition. The Convention against Transnational Organized Crime (TOC), that entered into force as recently as 29 September 2003, took a different approach. Rather than defining organized crime, it captures a typology of situations. The United Nations Convention against Corruption has taken a similar approach. Defining and criminalizing such concepts as bribery, money laundering, abuse of power, embezzlement and so forth becomes de-facto a definition.

6. From a substance viewpoint, the Convention breaks new ground with its provisions on prevention and asset recovery. This Convention is innovative because it is a very balanced instrument. It provides for law enforcement as well as for preventive measures. It offers technical assistance to help countries implement the preventive tools. Being a United Nations Convention, it has a potentially universal scope of application, differently from other existing instruments.

7. However, it may be noted that a number of originally envisaged articles had been deleted or alterations and new insertions are made by the Ad Hoc Committee all along the drafting of the Convention starting from the first to the final draft. This trend was quite noticeable at the fifth and the sixth session of the Ad Hoc Committee. It may also be noted that many important provisions had been deleted, and the severity of number provisions such as the chapter on 'implementing mechanism', 'political funding' etc., had been diluted to a considerable extent to accommodate the divergent views of the member states and reach compromises among them. This will reflect on the effectiveness of the Convention.

8. Despite this trend, the finalization of the United Nations Convention against Corruption is indeed a real achievement in the global fight against corruption. It is hoped that the earlier deleted provision may come back in the form of Protocols to the Convention against Corruption in the near future.

9. Finally, one must acknowledge the immense contribution made by the UN Office for Drug Control and Crime Prevention (ODCP) in the preparation of this Convention. AALCO is looking forward to establish close relation with the ODCP to initiate joint programmes for promoting wider ratification of the Convention among the Asian-African countries. It is hoped that the Asian African countries would be in the forefront in the ratification of the Convention and in enacting implementing legislation. In this context, it is also suggested that the AALCO Secretariat could organize a workshop/seminar on the UN Convention against Corruption for the purpose of dissemination of information regarding the legal implications of the Convention.

ANNEXURE: 1

DEVELOPMENTS IN THE DRAFTING OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

A. DISCUSSION HELD IN THE FIRST TO FIFTH SESSIONS OF THE AD HOC COMMITTEE

The Ad Hoc Committee for the Negotiation of a Convention against Corruption held its **first session** in Vienna from 21 January to 1 February 2002. At this meeting the Ad Hoc Committee elected the officers of the Bureau by acclamation. The bureau of the Ad Hoc Committee met several times during the first session to consider matters pertaining to the organization of work. The Chairman informed about the decision taken by the bureau regarding the arrangements in the work involved in the negotiation of the draft convention.

The Ad Hoc Committee held its **second session** in Vienna from 17 to 28 June 2002, during which it held 18 meetings. At this session, the Ad Hoc Committee continued and completed the first reading of the draft convention against corruption. It based its deliberations on the consolidated text of the draft convention contained in document A/AC.261/3 (Parts II-IV) and on proposals and contributions made by Governments. A one-day technical workshop on asset recovery was also organized at this session. The purpose of the workshop was to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery.

The Ad Hoc Committee held its **third session** in Vienna from 30 September to 11 October 2002, during which it held 20 meetings. At this session, the Ad Hoc Committee completed the second reading of articles 1, 2 (subparagraphs (a), (d), (f), (n) and (o)), 4 bis-19 bis, 21-29 and 31 of the draft convention. It based its deliberations on the consolidated text of the draft convention contained in document A/AC.261/3/Rev.1 and Corr.1 and on proposals and contributions made by Governments.

The Ad Hoc Committee held its fourth session in Vienna from 13 to 24 January 2003, during which it held 20 meetings. It based its consideration of those articles on the consolidated text contained in documents A/AC.261/3/Rev.1/Add.1 and A/AC.261/3/Rev.2 with particular emphasis on articles 2 (remaining definitions), 3, 4, 20, 30, 32-39 and 40-85 and on proposals and contributions made by Governments (A/AC.261/L.153 Some of them AALCO's Member States such as Arab Republic of Egypt, India, Lebanon, the Libyan Arab Jamahiriya, Pakistan, the Republic of Korea, Thailand, Turkey and Yemen).

The Ad Hoc Committee held its **fifth session** in Vienna from 10 to 21 March 2003, during which it held 20 plenary meetings and 10 parallel meetings of informal consultations. Amb. Dr. Ali Reza Deihim, Deputy Secretary-General, represented the AALCO Secretariat. At this session, the Ad Hoc Committee considered articles 19-50, 1-3, 50 bis-59 and 73-77, in that order. It based its deliberations on the consolidated text contained in document A/AC.261/3/Rev.3 and on proposals and contributions made by Governments. The Ad Hoc Committee also provisionally approved a number of articles.³⁹

B. REPORT OF THE AD HOC COMMITTEE FOR THE NEGOTIATION OF A CONVENTION AGAINST CORRUPTION AT ITS SIXTH SESSION

³⁹ For detailed report on the deliberations in the first to fifth sessions of the Ad Hoc Committee negotiating UN Convention against Corruption, refer AALCO Seoul Session Brief, document no. AALCO/XLII/SEOUL/2003/S.12

The Ad Hoc Committee for the Negotiation of a Convention against Corruption held its sixth session in Vienna from 21 July to 9 August 2003. The Sixth session lasted a week longer than the previous five sessions and included evening sessions, during which it held 37 plenary meetings. Delegates from 128 Member States participated.

At the opening of the sixth session, the Chairman expressed his optimism that the Ad Hoc Committee would successfully complete the negotiation process this session. He recalled the extensive progress made at the past five sessions, during which the Ad Hoc Committee had gone through the draft convention three times and had managed to reach preliminary agreement on a number of provisions, and encouraged delegations to use the extended final session productively. The Chairman called upon delegations to remain flexible, listen to each other, and be innovative and ready to compromise, making concessions if necessary.

The representative of Guatemala, speaking on behalf of the members of the Group of 77 and China, stated that the definition of “public official” in the draft convention should include a wide range of civil servants at all levels and branches of government and any other person performing a public function even if contracted to perform that function. In addition, he called for strong, practical and clear provisions in the chapter on criminalization to ensure the effectiveness of the future convention. In that regard, he also supported the inclusion of an article effectively criminalizing illicit enrichment. He emphasized the importance of regarding the issue of returning assets to the country of origin as the country’s inalienable right. He stressed the need to establish effective international provisions on the seizure of assets acquired by means of corruption and their prompt return to the country of origin without political conditionalities. With regard to international cooperation, he underscored that the provisions on extradition and mutual legal assistance should be comprehensive and strengthened as much as possible, so no offences covered in the convention were to be treated as political offences. The convention should also be considered the legal basis for extradition among States parties.

The representative of Zimbabwe, speaking on behalf of the Group of African States, informed the Ad Hoc Committee that at the Summit of the African Union held in Maputo from 10 to 12 July 2003 the leaders of the African States had adopted the African Union Convention on Preventing and Combating Corruption, in which the members of the Union committed themselves to the promotion of integrity, accountability and good governance and, above all, to a policy of “zero tolerance” of all types of corruption. In addition, the Memorandum of Understanding of the African Peer Review Mechanism had been signed by a number of African States at the Sixth Head of State and Government Implementation Committee Meeting of the New Partnership for Africa’s Development, held in Nigeria on 9 March 2003. Under that Mechanism, which aimed at promoting transparency, accountability and good governance, the member States would conduct voluntary self-assessment, constructive peer dialogue and persuasion, as well as share their experience. With regard to the draft convention, he indicated that the definition of “public official” should be all-embracing and expansive so as to include those who might not currently be classified as public officials but whose duties might well be in the public domain in future. He also stressed the need for unconditional return of assets that were illegally removed by corrupt leaders and multinational companies to the countries of origin. In that connection, he welcomed Security Council resolution 1483 (2003) of 22 May 2003, in paragraph 7 of which the Council decided that all Member States should take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items illegally removed since 1990, and was of the opinion that the words and spirit of resolution 1483 (2003) must be incorporated into chapter V of the draft convention.

The representative of Guatemala, speaking on behalf of members of the Group of Latin American and Caribbean States, emphasized that a multidisciplinary approach was necessary to combat corruption. Regarding the scope of application, he reiterated the stance of the Group that corruption could be defeated only by criminalizing the illicit conduct of public as well as private perpetrators. In that regard, he also mentioned that the Group was flexible on the incorporation of the global definition of the term “corruption”, provided that it would not limit the scope of application.

He emphasized the importance of the preventive measures and indicated that a case-by-case analysis would be appropriate in determining the degree to which the measures should be obligatory. In that connection, he expressed the concern of the Group about the current wording of article 4 bis, which was not considered the best way to begin the chapter. With regard to criminalization, he emphasized that it would be indispensable to specify in the draft convention as many acts of corruption as possible that States parties should establish as offences in order to provide an adequate legal basis for international cooperation. He stressed the importance of the recovery of assets of illicit origin derived from acts of corruption and expressed the willingness of the Group of Latin American and Caribbean States to promote compromise between the different positions on the subject.

The representative of Italy, speaking on behalf of the European Union, as well as the acceding countries and the associate countries, stressed that the convention should present a high global standard, comparable to that of other international anti-corruption instruments, and should be comprehensive in nature, including both prevention and law enforcement measures at the national and international levels. He expressed support for the inclusion of articles establishing a mechanism for recovery of state assets and called upon delegations to pay particular attention to article 61 as a good basis for discussion. With regard to criminalization and preventive measures, he supported effective provisions, while the merits of each provision should be evaluated separately so that the Ad Hoc Committee could decide on its mandatory or optional nature on the basis of its specific content. He then emphasized the importance of an effective follow-up system and recommended that a monitoring mechanism be established by the convention itself, leaving the more detailed procedural aspects to the Conference of the Parties to the Convention.

The representative of the Syrian Arab Republic, speaking on behalf of the Group of Arab States and associating himself with the statement by the Group of 77 and China, reiterated that it was necessary to reinforce international cooperation regarding prevention, extradition and mutual legal assistance. With regard to chapter V, he stressed that it was indispensable to ensure that assets of illicit origin derived from acts of corruption were returned effectively to the countries of origin without political conditionalities. Given that there were several provisions in the draft convention taken from the Organized Crime Convention, he called upon all delegations to commit themselves to applying the Organized Crime Convention, as well as to incorporate new aspects that had not been taken into account in that Convention into the new convention. In conclusion, he expressed the readiness of the Arab States to cooperate fully with other delegations and to be actively involved in the work of the Ad Hoc Committee.

The Executive Director then mentioned certain key components that would be required to reach consensus in issues as complex as those covered by the convention. Firstly, he emphasized the importance of a good knowledge of the issues and an equally good understanding of the implications that provisions of the draft convention might have for domestic regulatory regimes as well as international cooperation. Secondly, a good understanding of national positions, coupled with sensitivity for the concerns that drove them and a desire to find ways to accommodate them, were all needed in order to aspire to a universal instrument. Thirdly, he stressed the need for a willingness to modify national positions and to explore every possibility of meeting each other midway. He affirmed that each concession for the sake of better international cooperation would be a victory for everyone. Fourthly, he mentioned the collective will to make sure that the final product would be of high quality and functionality and would reflect an appropriate equilibrium.

Consideration of the Draft UN Convention against Corruption at the sixth Session

The Ad Hoc Committee, at its 99th to 135th meetings, considered the remaining provisions of the draft convention.

At this session the Ad Hoc Committee provisionally approved the following: article 1(a) and (c); article 2 (a), (c), (d), (g) and (i) and the deletion of subparagraphs (b), (e) and (l); article 4 (1); the deletion of article 4 bis; article 5; article 11-14; article 19 bis; article 21-25; the deletion of article 26;

the deletion of article 28; article 32; the insertion of a new article 32 bis; article 33 (2) (b); article 39; article 40 (7) (b); article 50 bis; article 51 (2)-(4); article 53 (j) and (k) of paragraph 3; article 64; article 65; article 67; article 67 bis; article 60; the insertion of a new article 60 bis; the deletion of article 68; article 61; the deletion of article 62; article 66; article 76; the deletion of article 76 bis; article 77; and the deletion of article 79.

The Ad Hoc Committee achieved major breakthrough in this session, including an agreement on the recovery of assets resulting from corruption and on a broad scope of preventive measures. One of the most important results of the sixth session was the adoption of a whole new chapter requiring Member States to return those assets, obtained through bribery and embezzlement, to the country of origin. This represents a new fundamental principle in international treaties. In the case of other forms of corruption, the return of assets will be based on satisfactory evidence of legitimate ownership and of damage, and requests for recovery will receive favourable consideration.

Asset recovery has been a major issue throughout the negotiations. In a number of countries, corruption has led to the depredation of national wealth. Some of those countries, whose former dictators have stolen hundreds of millions, or even billion, of dollars, have made a great contribution in the search for new rules, including the Philippines and Nigeria. Another major achievement of the agreement reached on preventive measures. The agreement includes norms of conduct for public officials, grater transparency based on public access to information on government business, as well as stricter procurement regulations and measures against money laundering.

In connection with the deletion of article 79, the representative of the Netherlands expressed his wish that the report of the Ad Hoc Committee reflect his statement to the effect that the future convention should not affect the rights and undertakings derived from international covenants on human rights. Following the decision of the Ad Hoc Committee to delete article 10, the representatives of Benin, Burkina Faso, Cameroon and Senegal expressed their wish that the report of the Ad Hoc Committee reflect their preference for a separate binding article on the financing of political parties; however, because of their willingness to accommodate the concerns of other delegations and to ensure the successful finalization of the draft convention, they had felt compelled to join the consensus on the deletion of article 10 and the incorporation of a new paragraph in article 6.

The Ad Hoc Committee also made progress in the discussion on few outstanding issues including dual criminality (whether a particular action has to be considered a crime in both countries in order for the latters cooperation) and difference over the definition of “public official”. The other outstanding matters that will be considered at the seventh session include: article 2 (g *bis*), (p) and (v); note for the *travaux preparatoires* on the concept of corruption; article 3; article 4 (2); note for the *travaux preparatoires* on protection of personal data; article 42 (3); article 53 (9); article 78 (including note for *travaux preparatoires* regarding federal states); article 79 *bis*; articles 80-85; and Preamble.

The bureau of the Ad Hoc Committee held a meeting on 14 August 2003 and decided that the seventh session would be held in Vienna from 29 September to 1 October 2003. The bureau was convinced that, because of the small number of outstanding matters regarding the draft text, and the indications that consensus was attainable in those matters, a long session was not warranted.

The Ad Hoc Committee expects that following the conclusion of its deliberations on all outstanding matters relating to the draft convention, the Ad Hoc committee shall approve the final text with a view to its submission to the General Assembly at its fifty-eighth session for consideration and action and subsequently to the Ministerial Signing Conference to be held in Merida, Mexico.

C. REPORT OF THE AD HOC COMMITTEE FOR THE NEGOTIATION OF A CONVENTION AGAINST CORRUPTION AT ITS SEVENTH SESSION

At its seventh session, held in Vienna from 29 September to 1 October 2003, the Ad Hoc Committee held six plenary meetings.⁴⁰ The Officer-in-Charge of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime opened the session by recalling the recent sad event of the passing away of Héctor Charry Samper (Colombia), Chairman of the Ad Hoc Committee. Against this development the Bureau decided to ask the representative of Jordan to serve as Acting Chairman of the Ad Hoc Committee at its seventh session. This was approved by the Ad Hoc Committee.

The Acting Chairman of the Ad Hoc Committee, underlined that the Ad Hoc Committee was close to fulfilling the mandate given by the General Assembly in its resolution 56/260, in which it had asked the Ad Hoc Committee to draft a broad and effective convention. The future convention would be of high quality and would be worded in a way that would make it possible for States to ratify it as quickly as possible. It would reinforce existing national and international laws against corruption and set practical standards to strengthen the global fight against corruption. A number of countries made statements on behalf of their respective groups.

Consideration of the Draft UN Convention against Corruption at the Seventh Session

During its seventh session, the Ad Hoc Committee considered the remaining provisions of and finalized the draft convention. It based its deliberations on the consolidated text contained in document A/AC.261/3/Rev.5 and on proposals and contributions submitted by Governments. The Ad Hoc Committee also had before it revisions of and amendments to the draft convention prepared during informal consultations at the request of the Chairman.

At its 141st meeting, on 1 October 2003, the Ad Hoc Committee approved the draft United Nations Convention against Corruption and decided to submit it to the General Assembly for consideration and action at its fifty-eighth session, in accordance with Assembly resolution 56/260. Also at the same meeting, the Ad Hoc Committee considered a draft resolution submitted by the Chairman, entitled “United Nations Convention against Corruption” (A/AC.261/L.233). The same was approved, as orally amended, by the Ad Hoc Committee, on the understanding that the text of the draft resolution would be finalized and submitted to the General Assembly for consideration and action at its fifty-eighth session.

The Executive Director of the UNODC noted that, on 29 September, the United Nations Convention against Transnational Organized Crime had entered into force and he had been informed that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, had received the required number of ratifications and would enter into force on 25 December 2003. The Ad Hoc Committee had added to those successes the approval of the new draft convention by consensus.

The representative of Mexico informed the Ad Hoc Committee of the preparations for the High-level Political Signing Conference, to be held in Merida, Mexico, from 9 to 11 December 2003,

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Representatives of 114 States attended the seventh session. Also attending the seventh session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and intergovernmental and non-governmental organizations.

pursuant to General Assembly resolution 57/169. This was followed by the concluding statements from the member states.⁴¹

D. THE CONSISTENCY GROUP

The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime had established a consistency group to ensure the consistency of the draft United Nations Convention against Transnational Organized Crime, together with the draft protocols thereto, in all the official languages of the United Nations. In view of the substantial contribution that that consistency group had made to the negotiation of the United Nations Convention against Transnational Organized Crime and its Protocols, the Ad Hoc Committee for the Negotiation of a Convention against Corruption also decided to establish a consistency group. The consistency group began functioning from the fifth session and the same was represented by various regional groups.

The consistency group held a total of 29 meetings during the fifth, sixth and seventh sessions of the Ad Hoc Committee and reviewed provisions of the draft convention that had been approved by the Ad Hoc Committee. The consistency group kept the Ad Hoc Committee abreast of its work through oral reports by its coordinator at the fifth and sixth sessions and brought to the attention of the Ad Hoc Committee at its seventh session the results of its work, together with recommendations on changes to be made to the draft convention (A/AC.261/24 and Corr.1). The Ad Hoc Committee approved all the recommendations of the consistency group.

⁴¹ The report of the Ad Hoc Committee on its seventh session appears in document A/AC.261/25.

ANNEXURE: 2

UNITED NATIONS CONVENTION AGAINST CORRUPTION

Title	Offences covered	Measures and Sanctions	International Cooperation	Prevention	Mechanisms for Implementation
United Nations Convention against Corruption. <i>(The Ad hoc Committee finalized the Convention at its seventh session and was adopted by the UN General Assembly and signed by 95 States at the High Level Political Conference for signing of the Convention held on 9-11 December 2003 at Merida, Mexico).</i>	<p>This Convention shall apply 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 (art.3).</p> <p>More specifically the offences covered⁴² are:</p> <ol style="list-style-type: none"> 1. Active and passive bribery of national public official (art.15) 2. Active and passive bribery in private sector (art. 21). 3. Bribery by foreign public officials or officials of public international organization (art.16). 4. Laundering of proceeds of crime (art.23). 5. Active and passive trading in influence (art.18). 7. Embezzlement, misappropriation or other diversion of property by a public official (art. 	<p>The liability of legal person may be criminal, civil or administrative and will be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (art. 26).⁴³</p>	<p><i>Extradition.</i> Yes 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. 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. (art. 44).</p> <p><i>Mutual legal assistance.</i> Yes. The State parties shall afford one another the widest measure of mutual legal assistance in criminal and non-criminal investigations, prosecutions and judicial proceedings (art. 53)</p>	<p>The Convention foresees the establishment of preventive anti-corruption body or bodies or a specialized body with necessary independence, material means and specialized staff for effectively carrying out their duty (art. 6).</p> <p>See also Article 36 (Specialized authorities)</p>	<p>A Conference of the State Parties to the Convention shall be convened not later than one year following the entry into force of the Convention to improve the capacity of States to combat and eradicate corruption and to promote and review the implementation of this Convention (art.63).</p>

⁴² The articles dealing with “Improper use of classified or confidential information” (draft art. 26) and “Improper benefits” (draft art.28) was deleted.

⁴³ The draft Article 36 which states that “Each State party shall to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public official” was deleted.

	<p>17).</p> <p>8. Embezzlement of property in the private sector (art.22)</p> <p>9. Concealment (art. 24).</p> <p>10. Abuse of functions (art.19).</p> <p>11. Illicit enrichment (art. 20).</p> <p>12. Obstruction of justice (Article 25)</p>				
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ANNEXURE: 3
AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

Title	Offences covered	Measures and Sanctions	International Cooperation	Prevention	Monitoring Mechanism
African Union Convention on Preventing and Combating Corruption	<p>1. Active and passive bribery of domestic public servants (art. 4 (a) and (b)).</p> <p>2. Active and passive bribery in private sector (art. 4 (e)). See also art.11</p> <p>3. Illegally obtaining benefits through any acts or omission in discharge of duties (art. 1 (c) (abuse of power or improper benefits)</p> <p>4. Trading in influence (art.4 (f)).</p> <p>5. Illicit enrichment (art. 4 (g) and art. 8). The definition has been given in art.1 (6).</p> <p>6. Use or concealment of proceeds derived from above mentioned corruptive acts (art. 4 (h)).</p> <p>7. Money Laundering, laundering of the proceeds of corruption (art. 6)</p> <p>8. Financing political parties using funds acquired through illegal and corrupt practices (art. 10).</p> <p>9. The diversion by a public official</p>	<p>Each State party shall adopt legislations and other measures to prevent, detect, punish and eradicate the acts mentioned in article 4 paragraph 1 of the Convention and undertakes to create, maintain and strengthen internal accounting, auditing and follow-up systems. The State parties also undertake to strengthen national control measures in setting up and operation of foreign companies (art. 5).</p>	<p><i>Extradition.</i> Yes Offences established in accordance with this Convention shall be deemed to be included in the internal laws as crimes requiring extradition and such offences shall be included as extraditable offences in extradition treaties existing between or among them (art. 15).</p> <p><i>Cooperation and mutual legal assistance.</i> Yes The Convention foresees that the parties shall provide each other the greatest possible cooperation and assistance in dealing immediately with requests from appropriate authorities (art. 18). Further, to prevent corrupt</p>	<p>The Convention foresees the establishment, maintenance and strengthening of independent national anti-corruption authorities or agencies (art. 5 (3) and adopt measures to ensure that the national authorities or agencies are specialized in combating corruption and related offences, and that they are allowed necessary independence and autonomy to effectively carry out their duties (art.20 (4) and (5)).</p>	<p>The implementation of the Convention shall be monitored by an Advisory Board on Corruption (the Board), whose functions includes:</p> <p>1. promote and encourage the adoption and application of anti-corrupt measures;</p> <p>2. collect and document information's;</p> <p>3. advice governments;</p> <p>4. submit report to the Executive Council of the African Union on the compliance status of the State Parties to this Convention (art. 22).</p>

	<p>or any other person, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies (art.4 (d).</p> <p>10.Participation as principal, co-principal, instigator, accomplice or accessory, conspiracy...to commit these offences.</p>		<p>officials from enjoying ill-acquired assets, the Convention encourages freezing of foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin (art.19 (3).</p>		
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MODIFICATIONS MADE IN THE CONVENTION AGAINST CORRUPTION
BY THE AD HOC COMMITTEE AND THE FINAL RENUMBERED ARTICLES*

Sl. No.	Old Articles*	Ad Hoc Committee Session	Renumbered Articles (as per Final text)
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Preamble			
	Preamble	No alteration	Preamble

Chapter I
General Provisions

1.	Art. 1 Statement of purpose	No alteration	Article 1
2.	Art. 2 Use of terms	The deletion of Article 2 paragraphs (b), (e) and (l) in the sixth session. Subparagraphs (m) to (o) (q) to (u) and (x) and (y) were deleted at the fifth session.⁴⁴	Article 2
3.	Art. 3 Scope of application	Only Paragraph 3 was deleted in the Sixth Session.⁴⁵	Article 3

* This document is prepared by the AALCO Secretariat (www.aalco.org) and is prepared on the basis of Documents nos. A/58/422; A/AC.261/3/Rev.5; Rev.4 and Rev.3. It is advised to refer to the original documents for further clarifications.

* Old Article as prepared and followed by the Office of Crime Prevention and Criminal Justice while negotiating the Convention.

⁴⁴ Article 2 (b) defines "Public function" as any temporary or permanent, paid or unpaid activity performed by a natural or legal person in the name of the State or in the service of the State or its agencies, enterprises, bodies or institutions; 2 (e) defines "Public international organization" as an intergovernmental organization. Members felt that it was not necessary to include a definition of "public international organization" since the term was well understood in international law.; 2 (l) defines the term "corruption" as to "include such acts as are provided in this Convention and are criminalised pursuant to Chapter III, whether attributed to a public or private official, and any other acts that the State Party may have criminalised or defined as acts of corruption under its domestic law or may so criminalise or define in the future". Article 2 (n) defines "Public function" as any temporary or permanent, paid or honorary activity performed by a natural or legal person in the name of the State or in the service of the State or its institutions; 2 (o) defines "International organization" as a public, intergovernmental, private or non-governmental organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention; 2 (q) defines "Legal person" to mean those entities, organizations or moral persons, in the public or private sector, defined as such in the law of States Parties; 2 (r) "Preventive measures" was not included as there is separate chapter dealing with this issue; 2 (s) "Act of corruption"; 2 (t) "Transfer of assets derived from acts of corruption"; 2 (u) "Repatriation of funds"; 2 (x) defines "Requested State" to mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;; and 2 (y)) defines "Requesting State" to mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets..

⁴⁵ Paragraph 3 states that this Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of

4.	Art. 4 Protection of sovereignty	Only Paragraph 3 was deleted in the sixth session.⁴⁶	Article 4
5.	Art. 4 bis Implementation of preventive measures	It was decided to consider this article after consideration the rest of the articles in Chapter II (Preventive Measures). However, it was deleted in the sixth Session	Deleted

Chapter II

Preventive Measures

1.	Art. 5 Preventive anti-corruption policies and practices	No alteration	Article 5
2.	Art. 5 bis Preventive anti-corruption body or bodies	Subparagraph (b) was merged with subparagraph (a). Subparagraph (c) and Subparagraph (e) was deleted at the fifth session.⁴⁷	Article 6
3.	Art. 6 Public sector	No alteration	Article 7
	Art. 6 bis Elected public officials	Merged with article 6	Merged
4.	Art. 7 Codes of conduct for public officials	Only paragraph 5 of article 7 was deleted and taken up under article 43 at the fifth session.⁴⁸	Article 8
5.	Art. 8 Public procurement and management of public finances	No alteration	Article 9

that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction.

⁴⁶ Paragraph 3 states that the provision of this article is a fundamental provision and any provision of any article contrary to it shall be disregarded.

⁴⁷ Article 5 bis (c) provides for one or more contact points to which any natural or legal person may report information concerning acts of corruption. It was decided to delete subparagraph (c) on the understanding that its content would be taken into account in the discussions on article 13 (Participation of

society). As regards Article 5 bis (e), which deals with establishing institutional bodies to set public auditing standards, it was decided to delete this

subparagraph on the understanding that its content would be taken into account in the discussions on articles 8 (Public procurement and public financial

management), paragraph 2 (a) (iii), and/or 12 (Accounting standards for private sector). See documents A/AC.261/3/Rev.3 and Rev.4.

⁴⁸ Paragraph 5 provides that each State Party shall take such measures as may be appropriate to ensure that no prejudice is caused to or sanction taken against

public officials for the mere fact that they have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be

considered to constitute an illegal or criminal activity, including those involving the public service. See documents A/AC.261/3/Rev.3 and Rev.4.

6.	Art. 9 Public reporting	No alteration	Article 10
7.	Art. 9 bis Measures relating to the judiciary and prosecution services	No alteration	Article 11
	Art. 10 Funding of political parties	Deleted in the sixth session ⁴⁹	Deleted
8.	Art. 11 Private sector	Former subparagraph (g) was integrated into new para. 3	Article 12
	Art. 12 Accounting standards for the private sector	Deleted ⁵⁰	Deleted
9.	Art. 13 Participation of society	No alteration	Article 13
10.	Art.14 Measures to prevent money-laundering	Paragraphs 6 and 7 were deleted ⁵¹	Article 14
	Art. 15 Accounting measures to combat the bribing of public official	Deleted at the second session ⁵²	Deleted
	Art. 16 Preventive measures		Deleted

⁴⁹ Views of delegations continued to diverge on this article, with a number of delegations suggesting its deletion. Several delegations, while supporting the goals behind the article, questioned whether negotiation of such a provision would be practical in the context of the future convention, given the enormous variations in political systems. See documents A/AC.261/3/Rev.3.

This Article provides that in order to prevent corruption effectively, each State Party shall take the necessary measures, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit acts carried out for the purpose of committing any of the offences established in articles of this Convention.

Paragraph 6 provided that each State Party, upon receiving information regarding a suspicious banking transaction or suspicious banking transactions, shall endeavour to take effective measures to detect the origin of the money involved in that transaction or those transactions, where possible in cooperation with other States Parties. Paragraph 7 provided that each State Party, upon receiving information indicating that certain funds are the proceeds of corruption or information regarding a person or persons involved in the commission of the predicate offence, or both, shall endeavour to take appropriate measures to apply the provisions of articles 33 (Criminalization of money-laundering of proceeds of corruption) and 62 (Return of property to the country of origin in cases of damage to state property) of this Convention, where possible in cooperation with other States Parties. See documents

A/AC.261/3/Rev.3.

⁵² This article deal with accounting measures that needs to be undertaken by each State Party to combat effectively the bribing of foreign and international public officials by legal.

		Deleted ⁵³	
	Art. 17 Measure against corruption	Deleted ⁵⁴	Deleted
	Art. 18 Prevention	Deleted ⁵⁵	Deleted

Chapter III

Criminalization and law enforcement

1.	Art. 19 Bribery of national public officials	No alteration	Article 15
2.	Art. 19 bis Bribery of foreign public officials and officials of public international organizations	No alteration	Article 16
3.	Art. 20 Complicity, instigation or attempt	Article 20 was replaced with article 30, as redrafted during the fourth session of the Ad Hoc Committee.	Deleted
4.	Art. 21 Trading in influence	No alteration	Article 18
5.	Art. 22 Embezzlement, misappropriation or other diversion of property by a public official	No alteration	Article 17
6.	Art. 23 Concealment	No alteration	Article 24
7.	Art. 24 Abuse of functions	No alteration	Article 19
8.	Art. 25 Illicit enrichment	Paragraph 2 and Paragraph 3 was deleted. ⁵⁶	Article 20

⁵³ This Article provides that each States Parties shall consider the applicability of legislative, administrative or other measures within their own institutional systems to establish, maintain and strengthen preventive measures.

⁵⁴ This article provides that each State Party shall take the necessary legislative, administrative and other effective measures to the extent possible and in compliance with its own legal system to promote integrity and to prevent, identify, detect and punish acts of corruption.

⁵⁵ This article provides that each States Parties shall develop and encourage best practices and policies aimed at preventing corruption and shall develop and improve national projects in this regard.

Paragraph 2 states that among those States Parties that have established illicit enrichment as an offence, such offence shall be considered an act of

	Art. 26 Improper use of classified or privileged information	Deleted in the Sixth Session ⁵⁷	Deleted
	Art. 27 Diversion of property	Deleted	Deleted
	Art. 28 Improper benefits	Deleted in the Sixth Session ⁵⁸	Deleted
	Art. 29 Other criminal offences	Deleted ⁵⁹	Deleted
	Art. 30 and 30 bis Participation and attempt; Knowledge, intent and purpose as elements of an offence	Were moved and renumbered 38 bis and 38 ter.	Deleted
	Art. 31 Enhancement of sanctions	Deleted	Deleted
9.	Art. 32 Bribery in the private sector	No alteration	Article 21
10.	Art. 32 bis Embezzlement of property in the private sector	Inserted at the Sixth session	Article 22
11.	Article 33 Laundering of proceeds of crime	Subparagraph (b) (iii) of paragraph 1 and Subparagraph (f) of paragraph 2 was deleted in the fifth session. ⁶⁰	Article 23

corruption for the purposes of this Convention. Paragraph 3 states that any State Party that has not established illicit enrichment as an offence shall provide assistance and cooperation with respect to this offence as provided for in this Convention.

⁵⁷ This Article provides that each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the improper disclosure by a public official for his or her own benefit or for that of a third party, of any kind of classified or privileged information that that official has obtained because of or in the performance of his or her functions.

⁵⁸ This article provides that Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the collection, directly or indirectly, by a public official, of any article of monetary value in undue quantities or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration, for his or her own benefit or for that of a third party.

⁵⁹ Under this article “non-disclosure” and “non-divestment” are considered as corrupt acts.

⁶⁰ Paragraph 1 (b) (iii) provides that the acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property. Paragraph 2 (f) states that the Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances. A/AC.261/3/Rev.3.

	Art. 34 Accounting offences	Deleted in the sixth session ⁶¹	Deleted
	Art. 35 Traffic in influence by a private person	Deleted in the second session⁶²	Deleted
	Art. 36 Measures against corruption	Deleted in the second session ⁶³	Deleted
12.	Art. 37 Obstruction of justice	No alteration	Article 25
13.	Art. 38 Liability of legal persons	No alteration	Article 26
14.	Art. 38 bis Participation and attempt	Moved from article 30 No alteration	Article 27
15.	Art. 38 ter Knowledge, intent and purpose as elements of an offence	Moved from article 30 bis No alteration	Article 28
16.	Art. 39 Specialized authorities	No alteration	Article 36
17.	Art. 40 Prosecution, adjudication and sanctions	No alteration	Article 30
18.	Art. 40 bis Statute of limitations	No alteration	Article 29
	Art. 41 Progressive development and harmonization of national legislation	Deleted in the second session ⁶⁴	Deleted
19.	Art. 42 Freezing, seizure and confiscation	Only paragraph 4 was deleted in	Article 31

⁶¹ This article provides that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) Creating or using an invoice or any other accounting document or record containing false or incomplete information; (b) Unlawfully omitting to make a record of a payment.

⁶² This article states that each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence any act or omission by any person who, personally or through a third party or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain.

⁶³ This article provides that each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials. There were two options.

⁶⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico and Colombia withdrew their proposals for article 41 (for the text, see A/AC.261/3 (Part II), options 1 and 2, respectively). Mexico did so on the understanding that paragraph 4 would be moved to article 40, paragraph 5 would be moved to an appropriate article under Chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 14 bis of article 51.

		the fifth session. ⁶⁵	
20.	Art. 42 bis Bank secrecy	No alteration	Article 40
21.	Art. 43 Protection of witnesses, experts and victims	No alteration	Article 32
22.	Art. 43 bis Protection of reporting persons	No alteration	Article 33
23.	Art. 44 Consequences of acts of corruption	No alteration	Article 34
24.	Art. 45 Compensation for damage	No alteration	Article 35
25.	Art. 46 Cooperation with law enforcement authorities	No alteration	Article 37
	Art. 47 Special investigative techniques	Deleted in the second session ⁶⁶	Deleted
26.	Art. 48 Cooperation between national authorities	No alteration	Article 38
27.	Art. 48 bis Cooperation between the national authorities and the private sector	No alteration	Article 39
28.	Art. 49 Criminal record	No alteration	Article 41
29.	Art. 50 Jurisdiction	Only subparagraph (e) of paragraph 2 was deleted in the fifth session. ⁶⁷	Article 42

Chapter IV

International cooperation

1.	Art. 50 bis International cooperation	No alteration	Article 43
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⁶⁵ Paragraph 4 states that each State Party shall also take measures to consider and execute requests for the interim freezing and seizure of proceeds of corruption in the possession of the offender, whether being kept in his or her own name or in the name of his or her friends, associates, relatives or accomplices, for a reasonable period of time necessary for investigation or trial and shall also establish mechanisms to consider claims by any person against the frozen assets.

⁶⁶ Article 47 was deleted during the first reading of the draft text, at the second session of the Ad Hoc Committee, as it was identical to article 59 of the draft text. A/AC.261/3/Rev.3.

⁶⁷ Subparagraph (e) states that the offence is committed against the affected State Party, as established in this Convention.

2.	Art. 51 Extradition	No alteration	Article 44
3.	Art. 52 Transfer of sentenced persons	No alteration	Article 45
4.	Art. 53 Mutual legal assistance	No alteration	Article 46
5.	Art. 54 Transfer of criminal proceedings	No alteration	Article 47
6.	Art. 55 Law enforcement cooperation	No alteration	Article 48
7.	Art. 56 Joint investigations	No alteration	Article 49
	Art. 57 Other cooperation measures	Deleted in the fifth session ⁶⁸	Deleted
	Art. 58 Bank secrecy	Deleted ⁶⁹	Deleted
8.	Art. 59 Special investigative techniques	No alteration	Article 50

Chapter V

Asset Recovery

1.	Art. 64 General provision	Subparagraphs (a), (c) and (d) were deleted and subparagraph (b) was moved to article 68 in the fifth session. In the sixth session the title of the article was renamed as ‘General Provision’ and the provision was further modified.	Article 51
2.	Art. 65 Prevention and detection of transfers of illicitly	No alteration	Article 52

⁶⁸ This article was deleted as International Cooperation was covered in a separate Chapter.

⁶⁹ Following the second reading of the draft text at the fourth session of the Ad Hoc Committee, the Vice-Chairman with responsibility for this chapter of the draft convention established an informal working group, coordinated by the United States, to produce a revised text of this article. The informal working group proposed the deletion of this article on the following understanding: (a) The inclusion of a second paragraph in article 50 bis; (b) the insertion of paragraphs 1 (without the first sentence) and 2 of article 58 in the footnote attached to paragraph 8 of article 53, noting that Mexico wished those paragraphs to be considered in that context; (c) the deletion of the brackets in paragraph 8 of article 53 and around the last sentence of paragraph 8 of article 42; and (d) the reformulation of paragraph 3 of article 58 and its inclusion in the draft text as new article 42 bis. A/AC.261/3/Rev.3.

	acquired assets		
3.	Art. 67 Measures for the direct recovery of property	Subparagraph (d) was deleted in the sixth session.⁷⁰	Article 53
4.	Art. 67 bis Mechanisms for recovery of property through international cooperation in confiscation	No alteration	Article 54
5.	Art. 60 International cooperation for purposes of confiscation	Subparagraph (d) and Paragraph 4 has been moved in the fifth session. Subparagraph (c) was deleted in the sixth session	Article 55
6.	Art. 60 bis Bilateral and multilateral agreements and arrangements	Inserted at the Sixth Session. Paragraph 10 of article 60 became article 60 bis.	Article 59
7.	Art. 68 Special cooperation	Paragraph 1 and Paragraph 4 was deleted in the sixth session. Paragraph 2 was reformulated and moved to article 65, paragraph 2 (b) in the fifth session.	Article 56
	Art. 69 Contents of a request	Deleted in the fifth Session ⁷¹	Deleted
	Art. 70 Limitations on cooperation	Deleted ⁷²	Deleted
8.	Art. 61 Return and disposition of assets	No alteration	Article 57
	Art. 71 Disposition of assets	During the informal consultations, the proposed article 71 was withdrawn by the United States	Deleted
	Art. 62 Return of property to the country of origin in cases of damage to state property	Deleted in the sixth session.⁷³	Deleted
	Art. 63 Use of terms	Moved as article 2	Deleted

⁷⁰ Paragraph (d) provides for Adopt such other measures as it may deem necessary to facilitate the recovery of property acquired through conduct criminalized in accordance with this Convention.

⁷¹ This article provides that in addition to the information specified in chapter IV, requests made pursuant to this article shall contain sufficient evidence and information to support the allegation.

⁷² This article provides that the execution of measures pursuant to this chapter shall be in conformity with principles of due process and shall not prejudice the rights of bona fide third parties and also provides instances where cooperation can be refused.

⁷³ Article 62 was deleted as its content might eventually be reflected in article 61.

9.	Art. 66 Financial intelligence unit	No alteration	Article 58
	Art. 72 Additional provisions	Deleted ⁷⁴	Deleted

Chapter VI

Technical Assistance and Information Exchange

1.	Art. 73 Collection, exchange and analysis of information on corruption	Paragraph 4 was deleted in the sixth session. ⁷⁵	Article 61
2.	Art. 74 Training and technical assistance	No alteration	Article 60
3.	Art. 75 Other measures: implementation of the Convention through economic development and technical assistance	No alteration	Article 62

Chapter VII

Mechanisms for Implementation

1.	Art. 76 Conference of the States Parties	No alteration	Article 63
2.	Art. 76 bis Reporting and evaluation	Deleted in the sixth session ⁷⁶	Deleted
3.	Art. 77 Secretariat	No alteration	Article 64

Chapter VIII

Final Provisions

1.	Art. 78 Implementation of the Convention	No alteration	Article 65
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⁷⁴ Article 72 because of its similarity with articles 60 and 74, was deleted.

⁷⁵ Paragraph 4 provides that States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of preventing, deterring, investigating and punishing acts of corruption.

⁷⁶ This article provided for the establishment of a subsidiary body consisting of ten members, who shall serve in their personal capacity, have expertise relating to the subject matter of this Convention and serve objectively and in the best interests of the Convention. The subsidiary body will report and evaluate the implementation of the Convention by the State Parties.

	Art. 79 Relationship to other agreements and arrangements	Deleted at the sixth session	Deleted
2.	Art. 79 bis Relationship between the United Nations Convention against Corruption and its protocols	No alteration	
3.	Art. 80 Settlement of disputes	No alteration	Article 66
4.	Art. 81 Signature, ratification, acceptance, approval and accession	No alteration	Article 67
5.	Art. 82 Entry into force	No alteration	Article 68
6.	Art. 83 Amendment	No alteration	Article 69
7.	Art. 84 Denunciation	No alteration	Article 70
8.	Art. 85 Depositary and languages	No alteration	Article 71