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Consideration of the draft United Nations Convention against Corruption

Report of the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires from 4 to 7 December 2001

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* A/AC.261/1.



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 (Assembly resolution 55/25, annex I), 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 analysing all relevant international instruments, other documents and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, at its tenth session, 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 the same resolution, the General Assembly requested the Secretary-General to convene, upon completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the related protocols, an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.
3. 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.
4. The Economic and Social Council, on the recommendation of the Commission on Crime Prevention and Criminal Justice at its tenth session, adopted resolution 2001/13 of 24 July 2001, entitled "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 in returning such funds". In that resolution, the 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, inter alia, as possible items of work to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (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) establishing criteria for determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.
5. Pursuant to General Assembly resolution 55/61, the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001. The Intergovernmental Open-Ended Expert Group recommended to the Assembly at its fifty-sixth session, through the Commission on Crime Prevention and Criminal Justice at its resumed tenth session and the Economic and Social Council, the adoption of a draft resolution outlining the terms of reference for the negotiation of the United Nations Convention against Corruption. At its resumed tenth session, held in Vienna on 6 and 7 September 2001, the Commission on Crime Prevention and Criminal Justice approved the report of the Intergovernmental Open-Ended Expert Group and the draft resolution contained therein and decided to transmit the report and the draft resolution through the Economic and Social Council to the Assembly for consideration and adoption, as appropriate.
6. In accordance with the draft resolution recommended by the Intergovernmental Open-Ended

Expert Group for adoption by the General Assembly, the Assembly would decide that the ad hoc committee established pursuant to Assembly 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”. In addition the Assembly would request 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. Moreover, the Assembly would invite 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 (E/CN.15/2001/3 and Corr.1) as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2001/13, as resource materials in the accomplishment of its tasks. Finally, the Assembly would request 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.

7. Also in accordance with the draft resolution, the General Assembly would accept with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the ad hoc committee established pursuant to resolution 55/61, prior to its first session.

8. In preparation for the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, the Secretariat invited Governments to submit proposals concerning the substantive content of the draft convention against

corruption. The Secretariat received proposals and contributions from the Governments of Argentina, Austria, Azerbaijan, Belarus, Bolivia, Chile, Colombia, France, Indonesia, Japan, Mexico, the Netherlands, Pakistan, Peru, the Philippines, Sri Lanka, Switzerland, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Zambia.

II. Organization of the Meeting

A. Opening of the Meeting

9. The Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, was held in Buenos Aires from 4 to 7 December 2001. The Informal Preparatory Meeting held eight meetings.

10. At the opening meeting, the Minister of Justice of Argentina stated that the purpose of the meeting was to take an important step towards forging the necessary consensus for the negotiation of a convention against corruption. That would imply recognizing the fact that corruption was a complex problem, requiring strategies that took into consideration all its aspects. Corruption had proliferated during the most recent decades in countries in all regions, regardless of their level of development or cultural traditions.

11. The Director of the Centre for International Crime Prevention of the Secretariat, recalled that, in 1998, the Government of Argentina had hosted the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. He expressed the hope that the current informal preparatory meeting, which was also being hosted by the Government of Argentina, would set the stage for equally successful negotiations. The decision of the General Assembly to begin the development of a convention against corruption would require the international community to take stock of workable, innovative solutions.

B. Attendance

12. The Informal Preparatory Meeting was attended by representatives of the following States: Algeria, Angola, Argentina, Australia, Austria, Belarus,

Belgium, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Germany, Greece, Guatemala, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Kenya, Mali, Mauritius, Mexico, Netherlands, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Republic of Korea, Russian Federation, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia and Zaire.

13. The following intergovernmental organizations were represented by observers: Council of the European Union, European Commission, Organization of Ibero-American States for Education, Science and Culture

14. The International Institute of Higher Studies in Criminal Sciences was also represented by an observer.

C. Election of officers

15. In view of the informal nature of the meeting, it was decided that the election of a full bureau would be dispensed with. Roberto De Michele (Argentina) was elected Coordinator of the Informal Preparatory Meeting. It was also decided that responsibility for the preparation of the draft report of the Informal Preparatory Meeting would be assigned to the Secretariat.

D. Adoption of the agenda and organization of work

16. At its 1st meeting, on 4 December 2001, the Informal Preparatory Meeting adopted the following agenda:

1. Opening of the Meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Consideration of proposals and contribution of Governments.
5. Adoption of the report of the Meeting.

E. Documentation

17. A list of documents is contained in annex I to the present report.

III. Summary of the discussion

18. The Coordinator of the Informal Preparatory Meeting invited delegations that had submitted proposals for text to be included in the draft convention against corruption to introduce their proposals.

19. Several delegations that had not submitted proposals indicated their commitment to the development of a comprehensive and effective convention against corruption. Those delegations intended to make contributions and to state their position through appropriate proposals as the negotiations proceeded and to participate actively in the negotiations with a view to achieving consensus.

20. Following a proposal by the Coordinator, the Informal Preparatory Meeting agreed that a useful outcome of its work would be the development of a consolidation of proposals for the text of the draft convention against corruption. It was the understanding of the Informal Preparatory Meeting that such a consolidation would not entail any pronouncement on the merits or content of the proposals, nor would it involve any negotiation of their substance. It was also the understanding of the Informal Preparatory Meeting that the consolidation would be without prejudice to the right of all delegations to submit proposals as they deemed appropriate and opportune during the negotiation process for consideration and action by the Ad Hoc Committee for the Negotiation of a Convention against Corruption.

21. The Informal Preparatory Meeting then proceeded to review a draft consolidated text prepared by the Secretariat, with a view to eliminating possible duplication and exploring the compatibility of the various proposals. The purpose of the review was to produce a text of the draft convention that would facilitate the work of the Ad Hoc Committee. The product of the review would be considered by the Ad Hoc Committee as the basis for its work at its first session, together with any other proposals submitted by delegations during the negotiation process. The Informal Preparatory Meeting requested the Secretariat

to complete the consolidated text on the basis of the proposals submitted to the Informal Preparatory Meeting and to distribute the document¹ as soon as each of those language versions became available, at the same time making the language versions available in each official language of the United Nations on the web site of the Centre for International Crime Prevention.

22. In carrying out its review of the consolidated text, the Informal Preparatory Meeting decided that a number of proposals that expressed national positions or offered policy guidance without containing concrete drafting suggestions ought to be preserved as a valuable reference for its work. The documents containing those proposals are listed in annex II to the present report.

23. The representative of Peru reiterated his Government's proposal for the organization of an international seminar to examine the problem of the recovery of assets (A/AC.261/IPM/11). The Informal Preparatory Meeting took note of that proposal and agreed that it might be considered further by the Ad Hoc Committee at its first session.

IV. Adoption of the report of the Meeting

24. Prior to the adoption of the report, the representative of Uruguay, speaking on behalf of the members of the Group of Latin American and Caribbean States, reaffirmed the determination of the members of that Group to participate in the common fight against corruption through the development of the United Nations Convention against Corruption, as well as through the introduction of measures that would render effective the implementation of that instrument following its adoption. In developing the draft convention against corruption, the Ad Hoc Committee should take into account the precedents set by the Organization of American States Inter-American Convention against Corruption (see E/1996/99), and the mechanism for its implementation. The members of the Group of Latin America and Caribbean States supported the initiatives of Argentina, Bolivia, Chile, Colombia, Mexico, Peru and Venezuela and intended to

continue to work together with other delegations in order to reach consensus. The members of the Group were of the view that the assumption of obligations by States through the ratification of the new convention would require sustained technical assistance. The members of the Group took note with appreciation of the proposal by Peru that the Centre for International Crime Prevention organize a seminar on asset recovery and recommended that the Secretariat envisage similar technical seminars designed to share comparative experience on complex and technical issues. The representative of Uruguay stated that mechanisms for the implementation of the future convention should address the improvement of national systems for the fight against corruption while respecting the principles of non-interference and non-intervention in the domestic affairs of States.

25. At its 8th meeting, on 7 December 2001, the Informal Preparatory Meeting adopted its report.

26. In closing the Informal Preparatory Meeting, the Minister of Foreign Affairs of Argentina expressed his Government's satisfaction for being able to act, once again, as host to a meeting for launching the negotiation of a convention against an important form of crime. More than ever before, it had become necessary for all States to reaffirm their commitment to joint action against corruption and to codify international norms to combat it and to ensure transparency. The Government of Argentina attached great importance to including in the draft convention provisions related to a mechanism designed to monitor its implementation.

¹ To be issued subsequently as document A/AC.261/3 (Parts I-IV).

Annex I

List of documents before the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

<i>Document number</i>	<i>Title or description</i>
A/AC.261/IPM/1	Annotated provisional agenda and proposed organization of work
A/AC.261/IPM/2	Switzerland: proposals and comments on the preparation of a draft United Nations Convention against Corruption
A/AC.261/IPM/3	Japan: non-paper
A/AC.261/IPM/4	Austria and Netherlands: proposed text of the United Nations Convention against Corruption
A/AC.261/IPM/5	Austria and United Kingdom of Great Britain and Northern Ireland: working paper on key prevention elements to be included in the United Nations Convention against Corruption
A/AC.261/IPM/6	Argentina: proposed elements for inclusion in the draft United Nations Convention against Corruption
A/AC.261/IPM/7	Sri Lanka: comments on the report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption
A/AC.261/IPM/8	Tunisia: proposals concerning the content of the draft comprehensive convention against corruption
A/AC.261/IPM/9	Turkey: comments for a convention against corruption
A/AC.261/IPM/10	France: elements for inclusion in the United Nations Convention against Corruption
A/AC.261/IPM/11	Peru: elements for inclusion in the United Nations Convention against Corruption
A/AC.261/IPM/12	Azerbaijan: proposals on the drafting of a United Nations Convention against Corruption
A/AC.261/IPM/13	Mexico: proposed draft of the United Nations Convention against Corruption

<i>Document number</i>	<i>Title or description</i>
A/AC.261/IPM/14	Colombia: proposed draft of the United Nations Convention against Corruption
A/AC.261/IPM/15	Bolivia: position paper regarding the terms of reference for the United Nations Convention against Corruption
A/AC.261/IPM/16	Indonesia: non-paper on the United Nations Convention against Corruption
A/AC.261/IPM/17	Zambia: proposals concerning the United Nations Convention against Corruption
A/AC.261/IPM/18	Venezuela: proposals for consideration at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
A/AC.261/IPM/19	United States of America: proposed chapter on recovery of assets
A/AC.261/IPM/20	Argentina: proposed chapter on preventive measures
A/AC.261/IPM/21	Belarus: proposals concerning the future United Nations Convention against Corruption
A/AC.261/IPM/22	Turkey: proposed draft of the United Nations Convention against Corruption
A/AC.261/IPM/23	Pakistan: proposed amendments to the draft United Nations Convention against Corruption
A/AC.261/IPM/24	Philippines: position paper
A/AC.261/IPM/25	Chile: proposed terms of reference for the work of the Ad Hoc Committee
A/AC.261/IPM/26	China: non-paper
A/AC.261/IPM/27	Canada: non-paper

Annex II

General comments

General comments on the draft United Nations Convention against Corruption and the work of the Ad Hoc Committee were contained in proposals submitted by the Governments of Argentina (A/AC.261/IPM/6), Austria (A/AC.261/IPM/5), Azerbaijan (A/AC.261/IPM/12), Belarus (A/AC.261/IPM/21), Bolivia (A/AC.261/IPM/15), Canada (A/AC.261/IPM/27), Chile (A/AC.261/IPM/25), China (A/AC.261/IPM/26), Indonesia (A/AC.261/IPM/16), Japan (A/AC.261/IPM/3), Sri Lanka (A/AC.261/IPM/7), Switzerland (A/AC.261/IPM/2), Tunisia (A/AC.261/IPM/8), United Kingdom of Great Britain and Northern Ireland (A/AC.261/IPM/5), Venezuela (A/AC.261/IPM/18) and Zambia (A/AC.261/IPM/17).
