



General Assembly

Distr.: Limited
19 March 2003

Original: English

Ad Hoc Committee for the Negotiation of a Convention against Corruption

Fifth session

Vienna, 10-21 March 2003

Draft report

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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, annex I), was desirable and decided to establish an ad hoc committee for the negotiation 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.
2. The Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption, convened pursuant to General Assembly resolution 55/61, was held in Vienna from 30 July to 3 August 2001. It 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 by the Assembly as resolution 56/260 of 31 January 2002.
3. In its resolution 56/260, the General Assembly decided that the Ad Hoc Committee for the Negotiation of a Convention against Corruption 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".
4. In the same 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;

V.03-82187 (E)



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.

II. Organization of the session

A. Opening of the session

5. The Ad Hoc Committee for the Negotiation of a Convention against Corruption 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 with simultaneous interpretation in the six official languages of the United Nations.

6. At the 79th meeting, on 10 March, the Chairman made a statement in which he recalled the considerable progress achieved by the Ad Hoc Committee at its first four sessions, during which the first and second readings of the draft United Nations Convention against Corruption had been completed. As the Ad Hoc Committee was to begin the third and final reading of the draft convention, he emphasized that the time had come to forge agreements, reach consensus and close the discussions on the various articles. He called upon delegations to remain flexible, listen to each other, be innovative and be ready to compromise, making concessions if necessary.

7. The Chairman then emphasized that the purpose of the informal consultations was to allow the Ad Hoc Committee to explore further issues that would require attention and to lay the ground for the final agreement. While being aware of the fact that parallel meetings would increase the workload of delegations and put a strain on the smaller delegations, he stressed the considerable potential of that method for bringing the Ad Hoc Committee closer to fulfilling its mandate to complete its work by the end of 2003. Therefore, he called upon all delegations to approach the informal consultations in the same spirit of cooperation that had prevailed during the previous sessions of the Ad Hoc Committee.

8. The Director-General of the United Nations Office at Vienna and Executive Director of the United Nations Office on Drugs and Crime expressed his appreciation for the work of the Ad Hoc Committee, including the wealth of proposals that had been made, which demonstrated how taking important action against corruption had become all over the world. He also commended the spirit of cooperation shown by the various delegations, which would be the best guarantor of the success of the future convention. He praised the rapid progress made and the exceptionally high level of attendance at the sessions of the Ad Hoc Committee.

9. The Executive Director noted that the attention of Governments, international organizations and civil society was focused on the successful completion of the negotiations and on the impact that the future convention would have on collective action against corruption. The new convention would offer significant opportunities for all countries to pursue and attain sustainable development and realize their full potential.

10. The Executive Director stated that the time had come to develop a road map that would enable the Ad Hoc Committee to complete its task by the end of 2003, pursuant to General Assembly resolution 56/260. He suggested that certain signposts be included on the road map, such as agreement on the articles on criminalization, agreement on most of the definitions and consolidated agreement on the chapter on international cooperation.

11. The representative of Brazil, speaking on behalf of the Group of 77 and China, stated that political considerations should not become conditions for implementing provisions of the future convention. He called upon the Ad Hoc Committee to consider certain elements emphasized at its previous sessions by the Group of 77 and to make every effort to complete its work by the end of 2003. He drew the attention of the Ad Hoc Committee to the following points regarding the logistics of the final phase of the negotiations of the draft convention: (a) parallel meetings should be avoided as much as possible; (b) during the discussion of a contested article in a working group, the plenary should not be in session or should only consider matters principally agreed upon; (c) a flexible approach should be followed regarding the discussion of chapters; (d) interpretation in all official languages of the United Nations should be provided when critical articles were being considered; and (e) the documents should be correctly translated.

12. The representative of Brazil mentioned that a great deal of attention should be given to the draft articles regarding definitions, scope and criminalization, strengthening of international cooperation, technical assistance and recovery of assets of illicit origin. He stressed that preventive measures should be largely advisory or optional, while the provisions on both criminalization and international cooperation should be mandatory, subject to domestic law. He also emphasized that the provisions on international cooperation and the return of assets should be applicable to both criminal and non-criminal investigations, including civil and administrative inquiries. He stated that provisions on various measures, including measures involving international cooperation, extradition and mutual legal assistance, should be strengthened in the draft convention, so that no offences covered by the future convention would be treated as political offences. With regard to definitions, he said that the definition of "public official" in the draft convention should include a wide range of functionaries at all levels of hierarchy. He also stated that the Group of 77 supported the criminalization of private sector activities affecting the public interest and the provision of cooperation between those States which had criminalized illicit enrichment and those which had not. The Group of 77 and China preferred the formulation "offences covered by this Convention" to the formulation "offences established by States Parties in accordance with this Convention". With respect to article 50 on jurisdiction, he insisted that the right of a State to establish its jurisdiction over an offence as an "affected State" should be included. He also mentioned that the meaning of final judgement or final conviction should be construed as a "legally enforceable judgement", as in the *travaux préparatoires* of the Organized Crime Convention.

13. The representative of Brazil 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 recovery by the country of origin. He called upon the Ad Hoc Committee to include a chapter on the recovery of

assets, including provisions on preventive measures, cooperation and recovery mechanisms, so that the future convention would facilitate the expeditious recovery and return of assets derived from corruption. With regard to the monitoring mechanism, he stated that it should not be intrusive in nature and should respect the sovereignty of States.

14. The representative of Greece, speaking on behalf of the European Union, as well as the acceding countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey), stated that the States members of the European Union fully understood the concerns of many delegations about the problem of the transfer of funds and assets of illicit origin derived from acts of corruption. He expressed satisfaction with the substantial progress made at the fourth session of the Ad Hoc Committee, including on the issue of the return of funds, which was of great political importance for the European Union. He called on delegations at the current session to demonstrate the same spirit of cooperation as they had shown in the negotiations at the previous sessions, especially regarding the issue of preventive measures. He emphasized that prevention was indispensable to the balance of the future convention, since effective preventive measures would be essential for a sustainable solution in other areas related to corruption, including the return of funds. He underlined the necessity to formulate provisions that would be workable and effective, equitable and acceptable to all parties. In conclusion, he reaffirmed the commitment of the European Union to contribute to the progress of the negotiations.

15. The representative of Cuba, speaking on behalf of the Group of Latin American and Caribbean States, noted that the increase of corruption in the era of globalization required the scope of the future convention to cover both the public and the private sectors. He emphasized that the preventive measures constituted an essential component of anti-corruption policy and expressed the concern of the Group of Latin American and Caribbean States about the current wording of article 4 bis, which was optional. While being aware of the differences in legal systems, the cultural diversity and the different stages of development of States, which should be taken into account when drafting the preventive mechanisms, he stated that those differences should not be a reason to weaken the fulfilment of the objectives of the future convention. He also mentioned that, in the discussion of a chapter with compulsory clauses, a case-by-case analysis would be appropriate to determine the degree to which the measures should be obligatory.

16. The representative of Cuba 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 sufficient legal basis for international cooperation. He then drew the attention of the Ad Hoc Committee to the flexible proposal by the Group of Latin American and Caribbean States on criminalization of illicit enrichment. While recognizing the concerns of some delegations about the proposal, he emphasized that it would provide a fundamental tool for fighting corruption in the legal systems of the countries that were members of the Group of Latin American and Caribbean States. He then clarified that the text in the proposal would not impose an obligation to criminalize illicit enrichment and, at the same time, would leave open the possibility of international cooperation. He also mentioned the willingness of the Group of Latin American and Caribbean

States to negotiate the text, taking into account the need to preserve the principle of the presumption of innocence. He emphasized the importance of the recovery of assets of illicit origin derived from acts of corruption for the countries that were members of the Group of Latin American and Caribbean States and called upon the Ad Hoc Committee to consider reconciling the different positions and concerns regarding the draft convention. He also underlined the need to have a broad and comprehensive chapter on the recovery of assets, including prevention, cooperation, recovery mechanism and disposition, as well as the general principle of return of assets to the countries concerned. He also stressed that the mechanisms for monitoring implementation should be agile, effective, non-discriminatory, transparent, proportional and impartial, without generating any excessive cost or diverting funds earmarked for programmes involving cooperation and technical assistance.

17. The representative of the Syrian Arab Republic, speaking on behalf of the Arab States, emphasized that all Arab States participating in the Ad Hoc Committee were ready to cooperate with other States to achieve consensus and to successfully complete the work on the draft convention. He called upon the Ad Hoc Committee to resolve the issue of the recovery of assets, so that those countries which had lost significant assets through corrupt practices would have an opportunity to recover those assets and use them for the benefit of their people. He also emphasized that the future convention should be effective and should be applicable and ratified by all. He noted that Arab States were prepared to play their part in ratifying and applying the future convention.

B. Attendance

18. The fifth session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was attended by representatives of 114 States. Also attending the fifth 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, intergovernmental organizations and non-governmental organizations.

C. Adoption of the agenda and organization of work

19. At its 79th meeting, on 10 March 2003, the Ad Hoc Committee adopted the following agenda for its fifth session:

1. Opening of the fifth session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the draft United Nations Convention against Corruption.
4. Adoption of the report of the Ad Hoc Committee on its fifth session.

D. Documentation

20. At its fifth session, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Algeria, Austria, Brazil, Cameroon, Chile, Colombia, Cuba, Egypt, France, Germany, India, Lebanon, the Libyan Arab Jamahiriya, Mexico, the Netherlands, Norway, Pakistan, Peru, the Republic of Korea, the Russian Federation, Thailand, Turkey, Yemen and [...].

III. Consideration of the draft United Nations Convention against Corruption

21. At the fourth session of the Ad Hoc Committee, the Chairman had requested all regional groups to appoint representatives to form a group that would be asked, beginning at the fifth session of the Ad Hoc Committee, to ensure consistency within the text of the draft convention and between all the language versions of the draft convention.

22. The Secretary announced the following appointments to the consistency group: the Group of African States had decided to appoint the representatives of Algeria, Cameroon and South Africa; the Group of Asian States had decided to appoint the representatives of China and Pakistan, with the representatives of Oman, Saudi Arabia and the Syrian Arab Republic alternating in the third position available to the Group; the Group of Eastern European States had decided to appoint the representatives of Poland and the Russian Federation; the Group of Latin American and Caribbean States had decided to appoint the representatives of Colombia and Mexico; and the Group of Western European and other States had decided to appoint the representatives of France and Spain, with the representatives of Australia and the United States of America alternating in the third position available to the Group. The Secretary also informed the Ad Hoc Committee that the consistency group would be assisted in its work by editors and translators from the translation section for each official language of the United Nations, as well as by a member of the secretariat of the Ad Hoc Committee.

23. The Chairman informed the Ad Hoc Committee that he had asked Joel Hernandez (Mexico) to act as coordinator of the consistency group.

24. At its 79th to 98th meetings, on 10 to 21 March, 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 [...].

25. The Ad Hoc Committee provisionally approved the following: article 1, paragraph (a); article 2, paragraphs (f), (h), (j) and (k); article 19 (subject to the resolution of an issue relating to the definition of "public official" contained in article 2, paragraph (a)); article 22; article 33 (except paragraph 2 (b)); article 38; article 38 bis; article 38 ter; article 40 (subject to a decision on whether to retain the expression "offences covered by this Convention" or substitute it with the expression "offences established in accordance with this Convention"); article 42 (except paragraph 3 and subject to a decision on whether to retain the expression "offences covered by this Convention" or substitute it with the expression "offences

established in accordance with this Convention”); article 42 bis; article 43 (subject to a decision on whether to retain the expression “offences covered by this Convention” or substitute it with the expression “offences established in accordance with this Convention”); article 43 bis (subject to a decision on whether to retain the expression “offences covered by this Convention” or substitute it with the expression “offences established in accordance with this Convention”); article 44; article 45; article 46; article 48; article 48 bis; article 49; article 50; article 51 (subject to a decision on whether to use the expression “offences covered by this Convention” or retain the expression “offences established in articles [...] of this Convention” in paragraph 2 and except paragraphs 3 and 4); article 53 (except paragraphs 3 (j) and (k) and 9); article 54; article 55; article 56; article 59; article 73; article 74; and article 75.

26. At the 96th meeting of the Ad Hoc Committee, the coordinator of the consistency group reported to the Ad Hoc Committee on progress achieved by the consistency group and on issues that it wished to bring to the attention of the Ad Hoc Committee. The consistency group was aware of the sensitivity of the choice that the Ad Hoc Committee would need to make between the expressions “offences covered by this Convention” and “offences established in accordance with this Convention”. Therefore, it decided to consider each case where one of the expressions appeared individually, in order to identify those cases where the choice was a substantive matter and those cases where the matter was one pertaining to consistency. The consistency group, in the light of the nature of chapter III of the draft convention and of the relevant obligations, recommended that the expression “offences established in accordance with this Convention” be used in article 37, paragraphs (a) and (b), article 40, paragraphs 3, 6, 7 and 10, and article 43, paragraph 1. The consistency group also recommended to replace the expression “parastatal enterprise” in article 40, paragraph 7 (b), with the expression “an enterprise partly or wholly owned by the State”, as the former expression appeared confusing and was difficult to translate in other languages.

27. The Ad Hoc Committee took note of the recommendations of the consistency group for consideration when finalizing the relevant articles.

IV. Informal consultations

28. The Ad Hoc Committee decided in approving its agenda for the fifth session to devote the informal consultations organized during the session to considering chapters II and V of the draft convention. The results of the informal consultations are contained in document A/AC.261/L.196 and Add.1.

V. Adoption of the report of the Ad Hoc Committee on its fifth session

29. At its 98th meeting, on 21 March 2003, the Ad Hoc Committee adopted the report on its fifth session (A/AC.261/L.193).

30. At the same meeting, the Ad Hoc Committee approved the provisional agenda and proposed organization of work for its sixth session (A/AC.261/L.194).
