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Ad Hoc Committee for the Negotiation of a Convention against Corruption

Sixth session

Vienna, 21 July-8 August 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".

* Now known as the United Nations Office on Drugs and Crime.



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; 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 sixth session in Vienna from 21 July to 8 August 2003, during which it held [...] plenary meetings with simultaneous interpretation in the six official languages of the United Nations.

6. At the 99th meeting, on 21 July, the Chairman made a statement in which he expressed his optimism that the Ad Hoc Committee would successfully complete the negotiation process at its sixth 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.

7. The Chairman recalled General Assembly resolution 56/260, in which the Assembly had asked the Ad Hoc Committee to draft a broad and effective convention. In order to fulfil that mandate, the Chairman emphasized that the future convention must be comprehensive, contain clear provisions, reinforce the existing national and international laws against corruption and set practical standards to strengthen the global fight against corruption.

8. The Chairman stated that he was heartened by the higher rate of attendance at the sixth session and by the presence of delegates from many least developed countries. On behalf of the Ad Hoc Committee, he thanked the Governments that had made the attendance of least developed countries possible through voluntary contributions.

9. The representative of Guatemala, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China, stated that the members of the Group wished to offer their assurances of cooperation in arriving at a successful conclusion of the negotiations, as well as their commitment to finalizing a comprehensive, strong and effective convention. The representative of Guatemala reiterated the Group's commitment to the following principles: (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 that were closely related; (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.

10. The representative of Guatemala 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. In that connection, he maintained that the concept of sharing assets was in contravention of the spirit of the draft convention and he could not support the inclusion of such a concept in it. 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. He mentioned that technical assistance was essential for developing countries to implement the provisions of the convention. Regarding the monitoring mechanism, he stated that it should not be intrusive in nature and should respect the sovereignty of States. The Conference of the Parties to the Convention could decide on the specific nature of such a mechanism.

11. The representative of Zimbabwe, speaking on behalf of the States Members of the United Nations that are members of the Group of African States, expressed the hope that the Ad Hoc Committee would reach consensus on a broad and effective convention at its sixth session and assured the Ad Hoc Committee of the Group’s support in that challenging task. He 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” in chapter I 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 emphasized that most of the key provisions in chapters II and III should be mandatory, thereby facilitating the international cooperation envisaged in

chapter IV. He also stressed that assets that were illegally removed by corrupt leaders and multinational companies in concert with those leaders must be returned unconditionally 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.

12. The representative of Guatemala, speaking on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States, emphasized that a multidisciplinary approach was necessary to combat corruption, as expressed in the statement of purpose of the draft convention. In addition, he stressed that the instrument should serve to promote and strengthen preventive measures, as well as to combat corruption through international cooperation and necessary technical assistance, which would strengthen the capacity of countries. He indicated that the Group of Latin American and Caribbean States was in favour of inclusion of integrity, good governance, transparency and accountability as the guiding principles for an effective policy, since they were the true meaning of “public affairs”, the fundamental reason for the existence of the State. 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. He also mentioned that the differences in legal systems, cultural diversity and the different stages of development of States should be taken into account when seeking appropriate harmonization in that area. 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. While being satisfied with what had been achieved regarding criminalization of illicit enrichment, he called for further flexibility of other delegations in the matter. He also supported the inclusion of other offences, such as trading in influence, abuse of functions, concealment, laundering of proceeds of corruption, liability of legal persons, obstruction of justice and corruption in the private sector. 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. He stressed that the general principle should be the prompt return of assets to countries that had suffered losses in their public treasury assets without any conditionalities or sharing of assets. While indicating that it would be meaningless to lower the standards in order to encourage ratification, he emphasized that the convention should enter into force promptly after the deposit of the twentieth instrument of ratification. Finally, he reaffirmed the commitment of the Group of Latin American and Caribbean States to the work of the Ad Hoc Committee.

13. The representative of Italy, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey), stated that, in addition to the regional efforts of the European Union to fight corruption, the Union continued to participate actively in the Ad Hoc Committee, bearing in mind the objective of rapidly achieving a satisfactory agreement. He 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, as provided in the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention"). He expressed confidence that the Ad Hoc Committee would produce a complete convention of practical, effective and universally acceptable provisions within the planned time and reiterated the commitment of the European Union to contributing to the negotiations to that end.

14. The representative of the Syrian Arab Republic, speaking on behalf of the States Members of the United Nations that are members of the Group of Arab States and associating himself with the statement by the Group of 77 and China, reiterated the position of the Group of Arab States that it was necessary to reinforce international cooperation regarding prevention, extradition and mutual legal assistance. He also emphasized that the participation of local communities was of crucial importance in the fight against corruption. 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.

15. At the 100th meeting, on 21 July, the Director-General of the United Nations Office at Vienna and Executive Director of the United Nations Office on Drugs and Crime made a statement. He expressed his appreciation for the work of the Ad Hoc Committee, including the exchange of views and the continuous search for solutions to the problems that remained during the period between the fifth and sixth sessions. He noted with satisfaction that the Ad Hoc Committee was approaching the final round with the same spirit of cooperation and flexibility that had prevailed during

the entire negotiation process and emphasized that that would be the best guarantee of success.

16. With regard to that spirit and the collective willingness to complete the process, the Executive Director 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. In conclusion, he stressed that he had detected the presence of all the key components of consensus and expressed his optimism that the Ad Hoc Committee possessed all the skills and the political will to succeed.

B. Attendance

17. The sixth session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was attended by representatives of 128 States. Also attending the sixth 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

18. At its 99th meeting, on 21 July 2003, the Ad Hoc Committee adopted the following agenda for its sixth session:

1. Opening of the sixth 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. Finalization and approval of the draft United Nations Convention against Corruption.
5. Draft resolution on the adoption of the Convention for consideration and action by the General Assembly at its fifty-eighth session.
6. Adoption of the report of the Ad Hoc Committee on its sixth session.

D. Documentation

19. At its sixth 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 Argentina, Australia, Azerbaijan, Belarus, Benin, Bolivia, Brazil, Canada, Chile, China, Colombia, Egypt, Finland, France, Germany, Guatemala, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Mauritius, Mexico, Morocco, the Netherlands, Nigeria, Pakistan, Paraguay, Peru, the Philippines, Portugal, the Russian Federation, South Africa, Sri Lanka, Sweden, Switzerland, the Syrian Arab Republic, Thailand, Turkey, Uganda, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Viet Nam, Yemen and Zimbabwe, together with a proposal submitted by the Chairman and observations submitted by the Office of Internal Oversight Services, the Office of Legal Affairs and the United Nations Office on Drugs and Crime.

III. Consideration of the draft United Nations Convention against Corruption

20. It should be recalled that, at its fifth session, the Ad Hoc Committee had provisionally approved articles 1, paragraph (a); 2, paragraphs (d), (f)-(k); 4 (except para. 2); 5; 5 bis; 6-9; 9 bis; 11; 13; 14; 19; 21; 22; 24; 25; 32; 32 bis; 33; 37; 38; 38 bis; 38 ter; 39; 40; 40 bis; 42 (except para. 3); 42 bis; 43; 43 bis; 44-46; 48-50; 51 (except paras. 2, 3 and 4); 52; 53 (except for paras. 3 (j) and (k) and 9); 54-56; 59; 65; 67; 67 bis (except para. 2 (a)-(c)); 60 (except paras. 2, 3 (c), 7 and 8); 68; 66; 73-75; 76; and 77.

[21. At its 99th to [...] meetings, from 21 July to 8 August, the Ad Hoc Committee considered the remaining provisions of articles 1, 2, 3, 4, 10, 12, 19, 19 bis, 23, 24, 25, 26, 28, 32, 34, 39, 42, 50 bis, 51, 53, 64, 65, 67, 67 bis, 60, 61, 66, 76 bis, 79, 79 bis, 82 and 84. It based its deliberations on the consolidated text contained in document A/AC.261/3/Rev.4 and on proposals and contributions made by Governments (A/AC.261/18-A/AC.261/21, A/AC.261/L.163/Add.1 and A/AC.261/L.204-A/AC.261/L.247.)

IV. Finalization and approval of the draft United Nations Convention against Corruption

22. At its 99th to [...] meetings, from 21 July to 8 August, the Ad Hoc Committee considered and finalized the draft convention. It based its deliberations on the consolidated text contained in document (A/AC.261/3/Rev.4) and on proposals and contributions submitted by Governments (A/AC.261/18 to 21, A/AC.261/L.163/Add.1, A/AC.261/L.204 to A/AC.261/L.247). The Ad Hoc Committee also had before it revisions of and amendments to the draft convention prepared by informal working groups at the request of the Chairman (A/AC.261/L.211, A/AC.261/L.234/Rev.1, A/AC.261/L.235, A/AC.261/L.239, A/AC.261/L.240, A/AC.261/L.241, A/AC.261/L.243/Rev.1, A/AC.261/L.244 and A/AC.261/L.247).

23. The consistency group held 19 meetings, from 22 July to 8 August, and reviewed all the provisionally approved articles of the draft convention. Its recommendations were incorporated into the final text of the draft convention and submitted to the Ad Hoc Committee for consideration.

[24. At its [...] meeting, on 8 August, 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.]

V. Draft resolution on the adoption of the Convention for consideration and action by the General Assembly at its fifty-eighth session

25. At its [...] meetings, the Ad Hoc Committee considered a draft resolution submitted by the Chairman, entitled “United Nations Convention against Corruption” (A/AC.261/L.233 and Rev.1). The Ad Hoc Committee also had before it proposals and contributions submitted by Governments (A/AC.261/L...., and A/AC.261/L....).

26. At its [...] meeting, on 8 August, the Ad Hoc Committee approved the draft resolution, as orally amended, 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.

VI. Adoption of the report of the Ad Hoc Committee on its sixth session

27. At its [...] meeting, on 8 August 2003, the Ad Hoc Committee adopted the report on its sixth session (A/AC.261/L.231).
