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## Commission on Crime Prevention and Criminal Justice

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### International cooperation in combating transnational crime

## Work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

### Report of the Secretary-General\*\*

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1-6	2
II. Second session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption. ....	7-12	3
III. Technical workshop on asset recovery .....	13-20	3
IV. Third session of the Ad Hoc Committee .....	21-28	5
V. Fourth session of the Ad Hoc Committee .....	29-35	6
VI. Fifth session of the Ad Hoc Committee .....	36	7
VII. High-level political conference for the purpose of signing the United Nations Convention against Corruption .....	37-38	7
VIII. Conclusion .....	39	8

\* E/CN.15/2003/1.

\*\* The footnote required in accordance with paragraph 8, section B, of resolution 53/208, in which the General Assembly decided that if a report was submitted late to the conference services, the reason for this should be included in a footnote to the document, was not included in the original submission.



## 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 (now known as the Office on Drugs and Crime).
2. In its resolution 56/260 of 31 January 2002, 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"; and 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.
3. In its resolution 57/169 of 18 December 2002, the General Assembly noted the progress made to date by the Ad Hoc Committee, and urged the Ad Hoc Committee to endeavour to complete its work by the end of 2003.
4. As at January 2003, the Ad Hoc Committee had held four sessions (21 January-1 February 2002, 17-28 June 2002, 30 September-11 October 2002 and 13-24 January 2003) during which it completed the first and second readings of the draft convention, and organized a one-day technical workshop on asset recovery on 21 June 2002, during its second session. At its fifth session, from 10 to 21 March 2003, the Ad Hoc Committee will start the third reading of the draft convention, building on the progress made in the negotiations, the profound understanding of the issues involved and the spirit of cooperation and political will to complete its work in a timely manner, as called for in resolution 57/169.
5. In its resolution 57/169, the General Assembly accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention; and decided to convene the conference for a period of three days before the end of 2003.
6. The present report is submitted to the Commission on Crime Prevention and Criminal Justice pursuant to General Assembly resolution 56/260, to apprise the Commission of progress achieved in the implementation of the mandate of the Ad Hoc Committee. The present report covers the sessions of the Ad Hoc Committee held since the eleventh session of the Commission.

## **II. Second session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption**

7. The second session of the Ad Hoc Committee was held from 17 to 28 June 2002 and attended by representatives of 123 States. Also attending the second session were observers for United Nations Secretariat units, regional commissions and specialized agencies, other intergovernmental organizations and non-governmental organizations.

8. At its second 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. Suggestions for consolidating text and proposals for new or amended provisions, together with specific observations on either the existing text or the substance of new provisions proposed by delegations at the second session, were included in a revised version of the draft convention (A/AC.261/3/Rev.1/Add.1).

9. At the opening of the second session, the Chairman stated that the Ad Hoc Committee had begun its work in the best possible spirit, but had to maintain the same vigorous pace at its second session in order to remain on track towards the implementation of its mandate. The Chairman emphasized that the political will of States was key to the success of the Ad Hoc Committee and mentioned the question of asset recovery, among other issues, which would serve as an indicator of the political will to join forces in order to protect the common good.

10. The Ad Hoc Committee continued the first reading of articles 40-50 and chapters IV-VIII of the draft convention. The issues covered at the second session included sanctions, confiscation, international cooperation, asset recovery, technical assistance, preventing the transfer of funds of illicit origin and monitoring of the future convention. Other aspects of corruption that were discussed included protection of "whistle-blowers" and victims, compensation for damages, extradition, mutual legal assistance and bank secrecy.

11. Statements were made by the President of the General Assembly at its fifty-sixth session, as well as by the representative of Spain on behalf of the States Members of the United Nations that are members of the European Union and the representative of Nigeria on behalf of the States Members of the United Nations that are members of the Group of African States. The Director-General of the United Nations Office at Vienna and Executive Director of the Office for Drug Control and Crime Prevention also addressed the Ad Hoc Committee.

12. The report of the Ad Hoc Committee on its second session appears in document A/AC.261/7.

## **III. Technical workshop on asset recovery**

13. At its first session, the Ad Hoc Committee had approved the proposal of Peru regarding the organization of a workshop on the question of asset recovery and had authorized the Secretariat to organize that workshop for one day during the second session of the Ad Hoc Committee.

14. A one-day technical workshop on asset recovery was held on 21 June 2002, during the second session of the Ad Hoc Committee.

15. 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.

16. The Secretariat invited 10 panellists, selected with due regard for equitable geographical representation, to make presentations and lead the discussion. The bureau of the Ad Hoc Committee had indicated that the panellists were to be selected and invited in their individual capacity. In that connection, the Secretariat drew on information provided by Governments in response to its request made pursuant to Economic and Social Council resolution 2001/13 of 24 July 2001.

17. The discussion at the workshop was structured along major thematic areas corresponding to the phases of a hypothetical case study. Each phase of the case study was assigned to panellists, who were asked to make brief presentations at the workshop. The panellists discussed recovery options, tracing and seizure, diplomatic or sovereign immunities, assets not directly derived from corruption, bank secrecy, the scope of assets to be recovered, tax evasion, the case of unreliable and inoperable safeguards against corruption, requests for assistance in seeking recovery, dual criminality, bona fide third parties, transparency, preventive and deterrent measures, the insufficiency of the national legislation and the lack of specialized skills and knowledge on the part of judges and prosecutors in developing countries.

18. Following the presentations and comments by other panellists, questions from the floor and discussion were invited and further issues were raised. Those included locus standi; the identification of parties and the roles of individual victims in civil proceedings; the role of requested States; limitation periods for civil action; the different standards of proof in civil and criminal cases and “double jeopardy”; and politically motivated claims. A number of possible measures were suggested by panellists or delegates, including controls on the use of anonymous or “shell” companies; subjecting the proceeds of high-level corruption to forfeiture and recovery whether or not a crime existed when they were generated; subjecting the proceeds of tax evasion to recovery; enhancing the powers of other States to block transfers where corruption made the source State unwilling or unable to do so; and the question of whether the convention should contain a single unified recovery scheme or create a range of options.

19. Furthermore, additional comments were also made on: (a) the need to address the problem of tracing and seizing illicit proceeds to transferees after the death of a corrupt official where no criminal prosecution was possible; (b) the need to establish more uniform criteria for evidentiary standards with respect to freezing and seizure of assets of illicit origin, including perhaps a model statute for such matters; (c) the need to establish uniform standards for the sharing of assets between cooperating States with respect to seized assets of illicit origin; and (d) the possibility of making greater use of rewards for information leading to the return of assets of illicit origin or using civil *qui tam* litigation whereby private citizens or “whistle-blowers” could sue corrupt officials and others who defrauded the Government on behalf of the State and then be rewarded with a portion of the assets of illicit origin recovered on behalf of the State.

20. The programme of the workshop appears in the note by the Secretariat of 22 May 2002 (A/AC.261/6) and the hypothetical case study is contained in the annex to that note. A list of panellists is contained in an addendum (A/AC.261/6/Add.1). In addition, a global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption (A/AC.261/12), which was submitted to the Ad Hoc Committee at its fourth session, in January 2003, benefited from the presentations by experts as well as from the outcomes of the discussion during the workshop.

#### **IV. Third session of the Ad Hoc Committee**

21. The third session of the Ad Hoc Committee was held from 30 September to 11 October 2002 and attended by representatives of 123 States. Also attending the third session were observers for specialized agencies and related organizations of the United Nations system, other intergovernmental organizations and non-governmental organizations.

22. At its third session, the Ad Hoc Committee started and completed its second reading of articles 1, 2 (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.

23. At the opening of the session, the Chairman recalled the progress achieved by the Ad Hoc Committee at its first two sessions. He called upon delegations to remain flexible, be innovative and ready to compromise and make every effort to reach consensus during the second reading of the draft convention, while maintaining the same vigorous pace and high standard of quality. He also recalled the spirit of cooperation that had prevailed during the first reading, adding that at no time had any delegation taken a position that ruled out the possibility of reaching agreement or indicated that there was an issue on which a compromise could not be reached. The Chairman then mentioned some of the issues that would require delegations to demonstrate a spirit of cooperation, such as the question of whether to include corruption in the private sector in the draft convention, and also stated that the Ad Hoc Committee should pay special attention to the issue of prevention.

24. The Ad Hoc Committee started the second reading of chapter II (arts. 4 bis-14) and proceeded with the second reading of the chapter on criminalization (arts. 19-39). Subsequent to its consideration of the articles on criminalization, the Ad Hoc Committee began considering articles 1-4.

25. Statements were made by the representative of Argentina on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States and the Minister of Foreign Affairs of Nigeria. The Director-General of the United Nations Office at Vienna and Executive Director of the Office for Drug Control and Crime Prevention also addressed the Ad Hoc Committee.

26. On the recommendation of the United Kingdom of Great Britain and Northern Ireland, the Ad Hoc Committee requested the Secretariat to prepare for its fourth session a paper containing a factual account of provisions of United Nations and

regional conventions related to follow-up or implementation mechanisms. The representative of Peru recommended that the submission of the Secretariat be in the form of a conference room paper.

27. In closing the session, the Chairman referred to the fact that the “rolling text” emerging from the second reading included a number of square brackets. The bureau of the Ad Hoc Committee felt that the use of square brackets was only for presentation reasons and had no other significance. The Chairman also expressed his concern at the repeated reference in the draft text of the convention to the conformity of its provisions with domestic law. In his view, such references should be the exception rather than the norm, because international law was not meant to be a mere reflection of national law. Further, the Chairman expressed the view that the Ad Hoc Committee had to work earnestly to avoid the perception that some proposals might create of reducing the scope of the new convention. In that connection, the Chairman recalled General Assembly resolution 56/260, in which the Assembly had requested the Ad Hoc Committee to develop a broad and effective convention, following a comprehensive and multidisciplinary approach.

28. The report of the Ad Hoc Committee on its third session appears in document A/AC.261/9.

## **V. Fourth session of the Ad Hoc Committee**

29. The fourth session of the Ad Hoc Committee was held from 13 to 24 January 2003 and attended by representatives of 117 States. Also attending the fourth 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.

30. At its fourth session, the Ad Hoc Committee continued and completed the second reading of the draft Convention. It based its deliberations on the consolidated text of the draft convention contained in documents A/AC.261/3/Rev.1/Add.1 and A/AC.261/3/Rev.2 and on proposals and contributions made by Governments. A global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption (A/AC.261/12) was also submitted to the Ad Hoc Committee by the Secretariat in accordance with Economic and Social Council resolution 2001/13.

31. At the opening of the session, the Chairman recalled the good progress achieved by the Ad Hoc Committee at its first three sessions and also called upon delegations to remain flexible, be innovative, be ready to compromise and make extra efforts to complete the second reading of the rest of the draft text at the fourth session, while endeavouring not to lower the high standard of quality of the draft convention. The Chairman then drew the special attention of the Ad Hoc Committee to some issues, such as the definition of the term “corruption”, corruption in the private sector, the question of asset recovery and the monitoring mechanism.

32. The Ad Hoc Committee started the second reading of articles 2 (remaining definitions), 3 and 4 of chapter I (General provisions). Subsequently, the Ad Hoc

Committee proceeded with the second reading of the remaining articles of the draft convention (arts. 20, 30, 32-39 and 40-85).

33. Statements were made by the representative of Cuba, on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States, the Minister of Justice of Peru and the Minister of Control of the State, Inspections, the Fight against Poverty and the Fight against Corruption of Gabon.

34. In closing the session, the Chairman called upon all delegates to reformulate their positions during the intersessional period and to determine how much room there was for compromise, so that the Ad Hoc Committee could achieve its task of delivering to the international community a broad, comprehensive, practical and functional global convention. He also emphasized the importance of both making advance preparations in order to arrive at solutions acceptable to all and trying to avoid putting forward new proposals at the present stage. The Chairman invited the Ad Hoc Committee to focus on proposing the amendments necessary to achieve consensus.

35. The report of the Ad Hoc Committee on its fourth session appears in document A/AC.261/13.

## **VI. Fifth session of the Ad Hoc Committee**

36. The fifth session of the Ad Hoc Committee will be held from 10 to 21 March 2003. The Ad Hoc Committee will start the third reading of the draft convention and it will base its consideration on the revised text of the draft convention contained in document A/AC.261/3/Rev.3 and on proposals and contributions made by Governments.

## **VII. High-level political conference for the purpose of signing the United Nations Convention against Corruption**

37. As mentioned above, in its resolution 57/169, the General Assembly accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention; and decided to convene the conference for a period of three days before the end of 2003; and requested the Centre for International Crime Prevention to work with the Government of Mexico, in consultation with Member States, in formulating proposals for the organization of the high-level political conference so that it might provide opportunities for high-level delegates to consider issues connected with the convention, in particular follow-up activities for its effective implementation and future work in the area of fighting corruption.

38. The Centre, which will act as the secretariat of the conference, has already initiated consultations with the host Government on the substantive and organizational arrangements for that important event. At the fourth session of the Ad Hoc Committee, the representative of Mexico announced that the conference would be held in the city of Mérida, Mexico.

## **VIII. Conclusion**

39. The Commission may wish to provide its views on the progress achieved thus far by the Ad Hoc Committee in the implementation of its mandate. The Commission may also wish to explore ways to support the work of the Ad Hoc Committee in order to ensure that the latter completes its assigned tasks by the end of 2003, in accordance with General Assembly resolution 56/260.

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