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

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Proposals and contributions received from Governments

Chile: proposed terms of reference for the work of the Ad Hoc Committee

1. The aim of Chile's proposal on the work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption is to achieve the central objective of drafting an international legal instrument against corruption. Chile therefore considers that it is necessary and appropriate that the work of the Ad Hoc Committee be based on the realization that that challenge will involve a complex and lengthy process of agreements and decision-making, which should be conducted with due regard for at least the three criteria below.

I. Effectiveness

2. This criterion involves the objective of drafting an effective United Nations international instrument against corruption. The achievement of that objective must be guaranteed to the greatest extent possible.

3. One way of guaranteeing the achievement of the objective in a systematic manner is to adopt a procedure that facilitates agreement through the process of collective decision-making.

4. Not all procedures facilitate that task and Chile therefore proposes a simple form of dividing the work into discussion levels. In that way, all the topics (preamble, preventive measures, sanctions and so on) can be assigned to different levels, according to the likelihood of fundamental agreements being reached on them. What will vary at each level is the degree of discussion and development that they will require.

5. Thus, the work can be divided into three discussion levels:

- (a) A first level of discussion dealing with topics and concepts;
- (b) A second discussion level that will focus on specific contents;

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(c) A third discussion level that will consider specific innovative contents and areas on which there is considerable disagreement.

6. Discussion could be conducted at these three levels within the Committee's time frame (2002-2003), giving priority to the discussion of topics at the first and second levels, but leaving a reasonable amount of time for consideration of third-level topics.

II. Full coverage

7. Since the terms of reference for the negotiation of the United Nations Convention against Corruption involve the drafting of a broad international instrument, the application of the terms of reference will entail the discussion of the widest possible range of topics, even if not all of them are included in the final version of the Convention. Thus, the three discussion levels should consider the various general topics so as to ensure the progressive and horizontal development of the provisions as the discussion proceeds from level to level. In this way, the list of topics included in paragraph 3 of the draft resolution of the Economic and Social Council, entitled "Terms of reference for the negotiation of the United Nations convention against corruption" (see A/AC.260/2 and Corr.1, para. 5), could be restructured as shown below in order to facilitate their discussion in the Ad Hoc Committee.

First level: topics and concepts

8. With respect to topics, the first level would cover both the form and substance of the basic elements of a convention of this type. In this proposal, the basic elements have been drawn from the proposals put forward by Argentina, Bolivia, Colombia, Mexico, Peru and Venezuela, as well as those of Austria and the Netherlands and Austria and the United Kingdom of Great Britain and Northern Ireland, and could be the following:

1. Preamble.
2. General concepts for the application of the Convention.
3. Prevention.
4. Criminalization and sanctions.
5. International cooperation and technical assistance.
6. Follow-up mechanism.

9. With respect to concepts, this level would cover the topics included in the basic elements, and would call for efforts to achieve the greatest possible degree of order and coherence. This is a preliminary step towards reaching agreement for the specific and detailed discussion of the second-level contents.

10. The topics for discussion and agreement could be treated in the following order:

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1. Preamble:
General background and purposes.
 2. General concepts for the application of the Convention:
 - (a) Definitions;
 - (b) Principles for application.
 3. Prevention:
 - (a) Preventive measures relating to transparency in public management;
 - (b) Preventive measures relating to the involvement of the public;
 - (c) Preventive measures relating to the private financial system;
 - (d) Preventive measures relating to the strengthening of state management and organization;
 - (e) Preventive measures relating to transparency in the financing of political activities.
 4. Criminalization and sanctions:
 - (a) Establishment of offences relating to bribery;
 - (b) Establishment of offences relating to conflicts of interest and trading in influence;
 - (c) Establishment of offences relating to illicit enrichment;
 - (d) Establishment of offences relating to the improper use of information;
 - (e) Establishment of offences relating to the laundering of proceeds of crime;
 - (f) Other offences.
 5. International cooperation and technical assistance:
 - (a) Commitments for judicial, law enforcement, administrative and financial cooperation;
 - (b) International technical assistance mechanisms.
 6. Follow-up mechanism:
 - (a) Principles of the mechanism;
 - (b) Organization;
 - (c) Operation;
 - (d) Financing;
 - (e) Management of information.
11. Agreement on the first-level topics will make it possible to proceed quickly to the second-level topics.

Second level: specific contents

12. The second-level topics are the specific contents of each of the six topics listed above, which could be established by giving priority to definitions of offences and specific contents found in other widely applied or authoritative international instruments.

13. In that regard, Chile would like to stress the importance attached in the terms of reference to 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 the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session.¹

14. At the second level, there will be a wide range of positions and an increasing divergence of views when specific matters containing many diverse elements are discussed.

15. In that context, it would be advisable to establish criteria to determine which of those specific contents constitute areas on which agreement is most likely to be reached. The criteria to be applied could be the extent to which the specific contents are already backed up by an international law tradition on them, their widespread or uniform treatment in various instruments, the expressed will of delegations to make progress or other criteria. Priority should be given to discussion of and agreement on those specific criteria.

16. In the case of specific contents that require wide-ranging discussions, it is advisable to establish specific time frames and, if necessary, additional time frames for their discussion. In any case, such time frames should not be the same as those established for the discussion of priority topics. Such specific contents can be dealt with at the third level.

Third level: innovative contents or contents on which there is considerable disagreement

17. Third-level topics include those on which there is considerable disagreement and on which there is less likelihood that agreement will be reached. Those topics should be considered in the final stages of the negotiations so that they do not affect agreement on a minimum and effective content.

III. Economy

18. Since the time limit for the achievement of the objective is December 2003 and since the terms of reference call for the holding of at least three annual meetings of the Ad Hoc Committee, the establishment of a tentative schedule of meetings and the topics to be discussed at such meetings will make it possible to prepare proposals and set up national work teams in advance.

¹ *Official Records of the Economic and Social Council, 2001, Supplement No. 10 (E/2001/30/Rev.1).*

19. Although the scheduling of a maximum number of meetings would afford the greatest opportunities for discussion, Chile considers that a large number of meetings will affect the equal opportunity of all States interested in participating, since attending more than three annual meetings might require considerable expenditure by delegations, in particular delegations from developing countries. Chile therefore considers that agreement should be reached on a schedule of work for 2002 and 2003 taking into consideration the criteria of economy and equal opportunity.

Proposed schedule of work and agenda

20. In the light of the foregoing three criteria, Chile proposes the following tentative schedule of work for 2002 and 2003:

2002

Three meetings:

1. On first-level subjects (topics and concepts, including the drafting of corresponding paragraphs of the future convention).
2. On second-level subjects (specific contents, including the drafting of corresponding paragraphs of the future convention).
3. On second-level subjects (specific contents, including the drafting of corresponding paragraphs of the future convention).

2003

Three meetings:

4. On second-level subjects (specific contents, including the drafting of corresponding paragraphs of the future convention).
5. On third-level subjects (innovative contents or contents on which there is considerable disagreement).
6. Consolidation and final drafting of the text of the convention.