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REPORT OF THE AD HOC INTERGOVERNMENTAL WORKING GROUP ON  
THE PROBLEM OF CORRUPT PRACTICES ON ITS FIRST, SECOND,  
THIRD AND RESUMED THIRD SESSIONS

I. RECOMMENDATIONS OF THE WORKING GROUP

1. The Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices recommends to the Economic and Social Council that it continue the Working Group in order to complete its work, that it expand the membership of the Working Group, and that it request the expanded Working Group to draft an international agreement to prevent and eliminate illicit payments in whatever form in connexion with international commercial transactions, and to consider other actions of combating corrupt practices. The Working Group further recommends to the Economic and Social Council that it consider the question of convening a conference of plenipotentiaries to conclude the international agreement.

II. ADOPTION OF THE REPORT

2. The Ad hoc Intergovernmental Working Group was established by Economic and Social Council resolution 2041(LXI) with the mandate to conduct an examination of the problem of corrupt practices, in particular bribery, in international commercial transactions by transnational and other corporations, their intermediaries and others involved, to elaborate in detail the scope and contents of an international agreement to prevent and eliminate illicit payments, in whatever form, in connexion with international commercial transactions as defined by the Working Group, and to report to the Economic and Social Council at its sixty-third session, including in its report such other relevant proposals and options as it may decide to submit.

3. The deliberations of the Working Group were based on the documents prepared at its request by the Centre on Transnational Corporations entitled: "Corrupt practices, particularly illicit payments in international commercial transactions: concepts and issues related to the formulation of an international agreement" (E/AC.64/3) and "Major issues to be considered in the examination of the problem of corrupt practices, in particular bribery, in international commercial transactions by transnational and other corporations, their intermediaries and others involved" (E/AC.64/7).

4. During its second and third sessions the Working Group prepared interim reports, E/AC.64/5 and E/AC.64/L.3 respectively. A proposal by the United States on ideas on the scope and content of an international agreement on illicit payments in connexion with international commercial transactions was presented at the second session as document E/AC.64/L.1.

5. At its resumed third session the Working Group in response to Economic and Social Council resolution 2041(LXI) to elaborate the scope and contents of an international agreement, prepared Part A below under the heading "Provisions relevant to the elaboration of an international Agreement Text to eliminate and prevent illicit payments, in whatever form, in connexion with international commercial transactions by transnational and other corporations, their intermediaries and others involved", and following the request by the Economic and Social Council to include in its report such other relevant proposals and options that it may decide to submit, the Group prepared Part B below under the heading "Other relevant proposals and options".

#### PART A

### PROVISIONS RELEVANT TO THE ELABORATION OF AN INTERNATIONAL AGREEMENT TO ELIMINATE AND PREVENT ILICIT PAYMENTS, IN WHATEVER FORM, IN CONNEXION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS BY TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTERMEDIARIES AND OTHERS INVOLVED

#### I. PREAMBLE

The Working Group considered various proposals for dealing effectively with the problem of "other corrupt practices". It was agreed that the preamble to the international agreement to prevent and eliminate illicit payments should express strong condemnation of all other forms of corrupt practices in international commercial transactions. The preamble should also express the need for all States to enter into appropriate bilateral and multilateral arrangements to prevent and eliminate other corrupt practices.

#### II. DEFINITIONS

For the purposes of this Agreement the term:

##### II.1 Bribery

"Bribery" is to be understood as determined in the relevant national law of each Contracting State. Governments agree to ensure that their pertinent legislation includes at least the offering, demanding, giving and receiving of any payments or gift to a public official [or other public person] in connexion with his official functions with the intention of improperly influencing a governmental decision in connexion with an international commercial transaction, [as well as the conspiracy, aiding and abetting or attempting to commit any of the foregoing].

##### II.2 Illicit payments

"Illicit payments" means bribery, as defined under item II.1 of this Agreement, as well as illegal political contributions as defined in national laws and regulations and any payment of royalties and taxes to illegal minority regimes in southern Africa [in contravention of United Nations resolutions.]

##### II.3 Enterprises

"Enterprise" means transnational corporations and other corporations or enterprises.

#### II.4 Intermediary

"Intermediary" means any person or enterprise which negotiates with or otherwise deals directly or indirectly with a public official or [other public persons] on behalf of another person or enterprise, [whether or not authorized.]

#### II.5 Public official

"Public official" includes any person whether appointed [elected, or otherwise chosen], whether or not paid for his services, who holds a [State or central or local] Government office or any employee of a Government agency, [including any State-owned or controlled enterprise].

#### II.6 Other public persons

"Other public persons" includes any candidate for political office, officials of political parties, or other persons who have or represent themselves as having the power to influence decisions of a Government or Government agency.

#### II.7 International Commercial Transactions

"International commercial transactions" includes any sale, contract or other business transaction with a Government or Government agency which under the laws of that State is open for competition to foreign persons or enterprises.

### III. ACTION AT THE NATIONAL LEVEL

#### III.1 Criminalization

(i) Each Contracting State shall ensure that [bribery] [illicit payments] in connexion with international commercial transactions are criminal offences under its national law and to provide criminal penalties therefor.

(ii) Each Contracting State shall ensure that its applicable national law prohibits:

(a) [bribery] [illicit payments] of its own public officials, or [other public persons] by any person or enterprise whether foreign or domestic for the purpose of obtaining the assistance of those officials in securing an international commercial transaction;

(b) [bribery] [illicit payments] of public officials [or other public persons] of another Contracting State by any person or enterprise within its territory for the purpose of obtaining their assistance in securing an international commercial transaction;

(c) the performance of any act, by any person or enterprise of its nationality which is connected with its territory and is in furtherance of [bribery] [illicit payments] of a public official [or other public person] of another State in violation of the law of that State for the purpose of obtaining his assistance in securing an international commercial transaction.

(iii) Each Contracting State shall investigate and prosecute in accordance with its national law all those who offer or give and all those who demand or receive [bribes] [illicit payments] in violation of its national law and undertake not to discriminate on the basis of nationality.

(iv) Criminal penalties for these offences shall include [fines for enterprises] and fines and imprisonment for persons, which are commensurate with the seriousness of the offences.

### III.2 Jurisdiction

#### [III.3 Reporting and disclosure

(i) Each [Contracting] State shall require, by law or regulation:

(a) all persons and enterprises of its nationality to report fees and commissions paid by them or by their foreign affiliates to intermediaries in order to obtain their assistance in securing international commercial transactions or to influence foreign legislation or regulations; [favourable to its commercial interest].

(b) all persons and enterprises, both foreign and domestic, to report fees and commissions paid by them to intermediaries in order to obtain their assistance in securing international commercial transactions with its Government or its Government agencies or to influence its legislation or regulations [favourable to its commercial interest].

(c) all persons and enterprises, both foreign and domestic, to report fees and commissions paid to them as intermediaries to assist in securing international commercial transactions with its Government or its Government agencies or to influence its legislation or regulations [favourable to its commercial interest].

(ii) This article shall not apply to payments made to any department, agency or branch of Government to satisfy an obligation imposed by laws.

(iii) Reporting requirements established pursuant to this article shall apply to payments made to secure an international commercial transaction [the value of which exceeds           ]. Reports shall also be required of fees and commissions paid to intermediaries [only when such fees and commissions, individually or in the aggregate, exceed           ], in respect of any international commercial transaction or any national law or regulation [favourable to its commercial interest]. [Payments of less than [           ] may be excluded in the calculation of such aggregates].

(iv) Reports made pursuant to this Agreement shall be in the format of, and contain the information indicated on, the form which is appended below.]

REPORT OF PAYMENTS TO INTERMEDIARIES

Instructions

1. Reports should include the following information with respect to all payments made in respect of a single sale, contract, or other business transaction, or in respect of a single law or regulation.

- (a) Person or enterprise filing this report (including name, employer, title, address and principal place of business).
- (b) Amount and date of each payment.
- (c) Person or enterprise making the payment (including name, employer, title, address, nationality, principal place of business, and relationship, if any, to person or enterprise filing the report).
- (d) Person or enterprise receiving the payment (including name, employer, title, address, principal place of service, and relationship, if any, to person or enterprise filing the report).
- (e) The sale, contract or other business transaction or the law or regulation with respect to which the request is made, including the name of the Government or Government agency concerned.

2. [The information required in subparagraphs 1-b, 1-d and 1-e need not be provided for payments of less than \$ \_\_\_\_\_ to intermediaries Totals of such payments may be reported as "miscellaneous payments to intermediaries".]

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The payments listed below have been made to intermediaries in order to obtain or retain business with the Government of \_\_\_\_\_ or an agency \_\_\_\_\_ thereof, [or to influence legislation or regulation of the Government of \_\_\_\_\_ or an agency \_\_\_\_\_ thereof.]

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The information provided above is complete and accurate to the best of my knowledge and belief.

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Name

Signature

Date

(v) Each Contracting State shall make it a criminal offence, punishable by fines for enterprises and fines or imprisonment for individuals who wilfully fail to make, or wilfully make false statements in, reports which are required pursuant to this Agreement.

(vi) Each Contracting State shall require, by law or regulation, the maintenance of complete and accurate records of the fees and commissions to intermediaries which are required to be reported pursuant to this article. Civil penalties shall be established for failure to keep, or for falsification of such records.

(vii) Each Contracting State shall designate a Government agency which will receive reports made pursuant to this Agreement and which will make such reports public [quarterly].

#### III.4 Non-deductibility of bribery, etc.

Each Contracting State shall make the costs incurred in the act giving rise to the offence of [bribery] [illicit payments] non-deductible items for the purpose of calculating taxable income where such an offence has been established in a criminal court of a Contracting State.

#### [III.5 Measures against the payments of royalties and taxes to illegal minority regimes in southern Africa in contravention of United Nations resolutions

(i) Each Contracting State shall prohibit its persons and enterprises of its nationality from making any royalty or tax payments to, or from knowingly transferring any assets or other financial resources in contravention of United Nations resolutions to facilitate trade with or investment in a territory occupied by, an illegal minority regime in southern Africa.

(ii) Each Contracting State shall require, by law or regulation its persons and enterprises of its nationality to report to the competent authority of that State any royalties or taxes paid to an illegal minority regime in southern Africa in contravention of United Nations resolutions.

(iii) Each Contracting State shall submit annually, to the Commission on Transnational Corporations through the Secretary-General of the United Nations, reports on the activities of transnational corporations of its nationality which collaborate directly or indirectly with illegal minority regimes in southern Africa in contravention of United Nations resolutions.]

#### III.6 Other measures

Each Contracting State recognizes [agrees to ensure that its national law provide] that if bribery or illicit payment are decisive in procuring the consent of a party to a contract relating to an international commercial transaction such party may at its option institute judicial proceedings in order to have the contract declared null and void.

#### IV. ACTION AT THE INTERGOVERNMENTAL LEVEL

##### IV.1 Exchange of Information

(i) The Contracting States shall submit through the Secretary-General of the United Nations to the Centre on Transnational Corporations annual reports concerning their implementation of this agreement. Such reports shall include new legislation and administrative regulations, as well as general information on investigations, prosecutions and other measures taken pursuant to such laws and regulations. Where convictions have been obtained under laws covered by this Convention, and all procedures for appeal have been exhausted so that the judgments are final, annual reports should include the following information with respect to the convictions:

- all relevant information concerning a convicted party insofar as it is not confidential under the national law of the reporting State.
- Description of the case
- Court of decision and date of decision
- Sanctions imposed.

(ii) The United Nations Centre on Transnational Corporations shall analyse and study the information provided pursuant to paragraph (1) and review the implementation of the agreement in the previous year and shall prepare annually an analytical report for the Contracting States summarizing this analysis, study and review;

(iii) The United Nations Centre on Transnational Corporations shall organize [periodically] [annually] or at the request of a Contracting State an exchange of views on issues relating to the implementation of the agreement.

##### IV.2. Mutual judicial assistance

(i) The Contracting States shall co-operate with each other in the investigation and prosecution by competent law enforcement authorities of offences which fall within the purview of this Agreement.

(ii) To this end, the Contracting States shall, upon request, enter into bilateral agreements with each other. Such agreements will, consistent with the national laws of the Contracting parties, provide for mutual assistance including:

- (a) Production of documents or information relevant to such investigations or court proceedings;
- (b) Authorization to conduct interviews;
- (c) Service of judicial and administrative documents.

Such bilateral agreements shall take into account the legal systems of the Contracting States involved and the need for preserving the confidential nature of the information submitted.

#### IV.3. Extradition

(i) [bribery] [illicit payments] shall be deemed to be included as extraditable offences in any extradition treaties existing between Contracting States. The Contracting States undertake to include [bribery] [illicit payments] as an extraditable offence in every extradition treaty that they may conclude in the future with other Contracting States.

(ii) If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another [Contracting] State with which it has no extradition treaty, it may at its option consider this Agreement as the legal basis for extradition in respect to [bribery] [illicit payments]. Extradition shall be subject to the conditions provided by the law of the requested State.

(iii) Contracting States which do not make extradition conditional on the existence of a treaty shall recognize [bribery] [illicit payments] as extraditable offence between themselves, subject to the conditions provided by the law of the requested State.

#### V. SETTLEMENT OF DISPUTES

(i) Any dispute between Contracting States concerning the interpretation or application of this Agreement shall be settled by bilateral consultations unless it is freely and mutually agreed by all States concerned that other peaceful measures be sought on the basis of sovereign equality of States.

[(ii) Any dispute between Contracting States concerning the interpretation or application of this Agreement which cannot be settled through bilateral consultations, shall, at the request of either Contracting State be submitted to an ad hoc arbitral tribunal for settlement in accordance with the applicable principles and rules of public international law.]

#### VI. ENTRY INTO FORCE

##### VI.1. Entry into force of the Agreement

##### Alternative 1

(i) This Agreement shall enter into force [30 days] after the receipt by the depository of the Xth instrument of ratification, [acceptance or approval] or accession.



Alternative 2

In respect of articles 'a' to 'n', this Agreement shall enter into force [30 days] after the receipt by the depository of the Xth instrument of ratification, [acceptance or approval] or accession. In respect of articles 'o' to 'z', this Agreement shall enter into force [30 days] after the receipt by the depository of the "X + Yth" instrument of ratification, [acceptance or approval] or accession.

(ii) The depository for this Agreement shall be the Secretary-General of the United Nations.

VI.2. Reservations

(i) Any Contracting State may at the time of its signature, ratification, [acceptance or approval] or accession, enter  reservation  with respect to the following articles:

(a) ...

(b) ...

(ii) No reservation shall be permitted in respect of any provisions of this Agreement other than those referred to in paragraph 1 of this article.

(iii) Any reservation entered at the time of signature shall be subject to confirmation at the time of ratification, [acceptance or approval] or accession.

(iv) The entry and confirmation of any reservation in accordance with paragraphs (i) and (iii) respectively of this article shall be communicated in writing to the depository.

(v) A reservation shall take effect from the time of the entry into force of the present Agreement with respect to the reserving State.

PART B

OTHER RELEVANT PROPOSALS AND OPTIONS

1. In operative paragraph 1 of resolution 2041 (LXI) the Economic and Social Council also invited the Ad Hoc Intergovernmental Working Group to include in its report "such other relevant proposals and options as the Working Group may decide to submit".
2. In the course of the sessions of the Working Group, many delegations stressed the importance of devoting equal emphasis to the two aspects of its mandate contained in paragraph 1 of the Economic and Social Council resolution 2041 (LXI). The Working Group accordingly decided to consider simultaneously the scope and content of a possible international agreement to prevent and eliminate illicit payments, in whatever form, in connexion with international commercial transactions as well as other relevant proposals and options.
3. During its third session the Working Group also discussed other relevant proposals and options contained in paragraphs 106-125 of document E/AC.64/7 entitled "Major Issues .....". These included the drafting of a model national law; the adoption of voluntary guidelines by enterprises and professional associations or other international organizations; the adoption of codes of conduct by intergovernmental organizations; unilateral national action and other forms of international action.
4. In the course of its consideration of the scope and content of an international agreement, the Working Group also decided that some of the items contained in Part A should be transferred to Part B for further consideration. These relate to:
  - (i) Elimination of tax shelters
  - (ii) Disclosure by public officials of their net worth
  - (iii) Other corrupt practices

The Working Group considered that these items could be dealt with by means of both national and international action.

5. National Action. The Working Group considered various forms of measures which could be adopted in national law to eliminate tax shelters in respect of bribery and illicit payments. Among the specific proposals considered were: that home countries impose relatively high tax surcharges on the profits made from transactions tainted with bribery; and that all countries adopt measures to ensure that tax law violations involving bribery and illicit payments are treated as criminal offences per se.
6. The Working Group also considered a proposal in connexion with the item on disclosure, that public officials be required by national law to disclose their net worth upon assumption of office, at prescribed intervals and at the end of their term of office.
7. Lastly, the Working Group considered a certification procedure in national law, which is described in paragraph 119 of document E/AC.64/7, by which the officials of all enterprises dealing with any government agency shall be required to sign a statement stipulating that no payments, fees or gratuities in whatever form were made in connexion with the transaction, other than those specifically referred to in the contract.

8. Some delegations expressed the view that it would be useful for the Working Group to continue to examine the feasibility of elaborating the text of a model national law to deal with the above and other related issues.
9. International Action. The Working Group emphasized that the work on a code of conduct which the Commission on TNCs is in the process of preparing should be accorded the highest priority. The Working Group took note of document E/C.10/31 on work related to the formulation of a code of conduct which contains a specific item on corrupt practices and also that some of the other items raise issues which are interrelated with the present item on "other corrupt practices".
10. The need for all States to enter into appropriate bilateral and multilateral arrangements to prevent and eliminate other corrupt practices was recognized.

### III. ORGANIZATION OF THE SESSIONS

6. The Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices held 3 sessions (the third being resumed). The first, second and third sessions were held at United Nations Headquarters from 15 to 19 November 1976, from 31 January to 11 February 1977, and from 28 March to 3 April 1977 respectively. The third resumed session was held at Geneva from 27 June to 1 July 1977. The Working Group held altogether 35 meetings.
7. The following States are members of the Working Group: Algeria, Colombia, Iran, Japan, Mexico, Nigeria, Pakistan, Sierra Leone, Uganda, United States of America, Venezuela and Zaire.
8. All members of the Working Group were represented at its sessions.
9. The following States members of the United Nations were represented by observers: Australia, Belgium, Canada, France, Germany, Federal Republic of, Italy, Netherlands, Nicaragua, Norway, Sweden, Tunisia and the United Kingdom of Great Britain and Northern Ireland.
10. Switzerland - a non-member State - was also represented by an observer.
11. The following non-governmental organizations were also represented: International Chamber of Commerce, International Organization of Employers.
12. At its first meeting the Working Group elected Mr. Rafael Rivas (Colombia) as Chairman. Following his resignation after the second session the Working Group elected at the 21st Meeting, Mr. Farrokh Parsi (Iran) as its Chairman. At its 10th and 22nd Meetings the Working Group elected the following officers: Mr. Junichi Nakamura (Japan) and Mr. J.F. Botero (Colombia) - Vice-Chairmen; and Mr. Harold E.L. Acemah (Uganda) - Rapporteur.
13. The Working Group adopted the following agenda:
  1. Opening of the session
  2. Election of officers
  3. Adoption of the agenda and organization of work
  4. Examination of the major concepts contained in paragraph 1 (a) of Economic and Social Council resolution 2041 (LXI), particularly the concept of illicit payments
  5. Examination of the problem of corrupt practices, in particular bribery, in international commercial transactions by transnational and other corporations, their intermediaries and others involved
  6. Elaboration in detail of the scope and contents of an international agreement to prevent and eliminate illicit payments, in whatever form, in connexion with international commercial transactions
  7. Adoption of the report to the Economic and Social Council on the work of the Ad Hoc Intergovernmental Working Group on the Problems of Corrupt Practices
14. The documents before the Working Group are listed in annex I to the present report.

ANNEX I

List of documents before the Working Group at its first, second, third and third resumed sessions:

<u>Document No.</u>	<u>Agenda item</u>	<u>Title</u>
E/AC.64/1	3	Provisional agenda for the first session.
E/AC.64/2	3	Provisional agenda for the second session.
E/AC.64/3	4, 5, 6	Corrupt Practices, particularly illicit payments in international commercial transactions; concepts and issues related to the formulation of an international agreement.
E/AC.64/4	4, 5, 6	Major issues to be considered in the examination of the problem of corrupt practices, in particular bribery, in international commercial transactions by transnationals and other corporations, their intermediaries and others involved.
E/AC.64/5	7	Report of the ad hoc Intergovernmental Working Group on the Problems of Corrupt Practices on its Second Session.
E/AC.64/6	3	Provisional agenda for the third session.
E/AC.64/7	4, 5, 6	Major issues to be considered in the examination of the problem of corrupt practices, in particular bribery, in international commercial transactions by transnationals and other corporations, their intermediaries and others involved.
E/AC.64/L.1	6	United States of America: Working Paper. Ideas on the scope and content of an international agreement on illicit payments in connexion with international commercial transactions.

<u>Document No.</u>	<u>Agenda item</u>	<u>Title</u>
E/AC.64/L.2	7	Draft report of the Ad Hoc Intergovernmental Working Group on Corrupt Practices at its second session.
E/AC.64/L.3	7	Draft report of the Ad Hoc Intergovernmental Working Group on Corrupt Practices at its third session.
E/AC.64/L.4	7	Draft report of the Ad Hoc Intergovernmental Working Group on Corrupt Practices at its first, second, and third (resumed) sessions.
E/AC.64/L.3/Annex II/Rev.1 Add. 1-3	7	Part A. Provisions relevant to the elaboration of an international agreement to eliminate and prevent illicit payments, in whatever form, in connexion with international commercial transactions by transnational and other corporations, their intermediaries and others involved.
E/AC.64/L.3/Annex II/Rev.1 Add.4	7	Part B. Other relevant proposals and options.