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REPORT OF THE AD HOC INTERGOVERNMENTAL WORKING GROUP ON THE PROBLEM
OF CORRUPT PRACTICES ON ITS FOURTH AND FIFTH SESSIONS

I. RECOMMENDATION TO THE ECONOMIC AND SOCIAL COUNCIL

1. The Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices, recognizing the need for the early adoption of an international agreement on illicit payments in connexion with international commercial transactions, recommends to the Economic and Social Council that it re-examine the question of convening a conference of plenipotentiaries to conclude an international agreement and that it decide on such further actions as may be deemed necessary in the drafting of an international agreement on illicit payments.

II. PROCEEDINGS

A. Drafting of an international agreement to prevent and eliminate illicit payments in connexion with international commercial transactions

2. The deliberations of the Working Group on this item of its agenda were based on 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") of the report of the Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices on its first, second, third and resumed third sessions (E/6006) and on the draft report on its fourth session (E/AC.64/L.5 and Corr.1), to which were annexed the proposals made by the delegation of France for a convention on the elimination of bribery in international commercial transactions, a proposal by the United States of America for part A and an alternative draft of articles 1, 2 and 4 in the French proposal prepared by the Secretariat.

3. At the 44th meeting, on 13 April 1978, the representative of Zambia, speaking on behalf of the African members of the Working Group, stated that he regretted that it had not been possible to have a thorough and meaningful discussion of chapter III.5, "Measures against the payments of royalties and taxes to illegal minority régimes in southern Africa in contravention of United Nations resolutions", contained in part A of document E/6006. He said that the African delegations attached the highest priority to that chapter, as well as to other sections of the draft agreement and expected reciprocal support from other delegations for chapter III.5. He expressed the hope that, at a later stage, it would be possible to hold a substantive discussion on the chapter.

4. One representative, speaking at the same meeting, stated that it understood the implications of the position of the African delegations and expressed the hope that it would be possible to reach agreement on the matter at a future stage.

5. A number of representatives of States with a federal system of Government indicated that they could accept the references to the words "regional or local" appearing in several articles, on the understanding that those States would rely, in that respect, on the law of the competent regional or local authorities.

6. In accordance with the mandate given to it by the Economic and Social Council in resolution 2122 (LXIII) to draft an international agreement on illicit payments, the Working Group prepared the following draft text:

**DRAFT INTERNATIONAL AGREEMENT TO PREVENT AND ELIMINATE ILLICIT
PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS**

"PREAMBLE

For the text, **see** annex III below.

"Article 1

"Each Contracting State undertakes to make the **following** acts punishable by appropriate criminal penalties under its national law:

"(a) The offering, promising or giving of any **payments**, gifts or other benefits by any **person**, on his own behalf or on behalf of any other natural or **juridical person**, to a public official either directly or indirectly or to another **person** with the intention of **inducing** such official to **perform** or refrain from the performance of his duties in connexion with for the purpose of obtaining or **retaining** an **international commercial transaction**.

"(b) The **soliciting**, demanding, accepting or receiving directly or indirectly by or on behalf of a public official of any payment, gift or **other benefit**, in order to perform or refrain from the performance of any act, falling **within** his functions, regular or otherwise, in connexion with the obtaining or retaining of **an international commercial transaction**.

"Article 2

"For the purposes of this Agreement the term:

"1. 'Public official' means any person **whether appointed or** elected who at the national, regional or **local** level holds a legislative, administrative, judicial, or military office or who is an employee of a **government agency** , including any State-owned or-controlled enterprise, and who performs **any governmental functions.** This term does not include any employee whose duties are essentially **clerical** or any employee whose duties do not include the exercise of **discretion.**

"2. '**International commercial transactions**' includes any **sale**, contract or **other** business transaction **with** a national, **regional** or local **Government** or governmental agency , and any application for governmental approval of a sale, contract or business **transaction,** **which** under the laws of that State is open to foreign persons or enterprises or to suppliers of imported goods, **services**, capital or **technology.**

"Article 3

"1. Each contracting State shall ensure that contracts **which** are entered **into** by **agencies** or **instrumentalities** of its **Government** for international **commercial** transactions include a provision that no payment, gift or other benefit **which** would constitute an **offence** under article I has been or **will** be offered, promised or given in **connexion** with the **transaction.**

"2. Each **contracting State** shall, in accordance with national and international law, **endeavour to** take all practicable measures **and** particularly **administer** its national laws and regulations, for the purpose of preventing the offences referred to in article 1 involving its own public officials or public officials of another State.

"Article 4

"1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 1 in the following cases:

"(a) When the offence is committed in the territory of that State;

"(b) When the offence is committed by involves a public official of that State;

"(c) First alternative:

When the alleged offender is a national of that State

Second alternative:

When the alleged offender is a national of that State, provided that a substantial element any element of that offence, or any act aiding or abetting that offence, is committed within the territory connected with the foreign commerce of that State.

"2. This Convention does not exclude any criminal jurisdiction exercised in accordance with the national law of a Contracting State.

"Article 5

"A Contracting State shall, if it has Jurisdiction under article 4 but does not extradite the alleged offender, be obliged without exception whatsoever in conformity with its procedural laws except in the case of minor offences to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence under the law of that State.

"Article 6 1

"(a) Each Contracting State shall require, by law or regulation:

1/ Several representatives pointed out that this article had not been discussed at the fourth and fifth sessions.

"(i) 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**.

"(ii) **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**.

"(iii) 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**.

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

"(c) 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**.

"(d) Reports made pursuant to this Agreement shall be in the **format**, 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-c need *not* be provided for payments of less than \$ _____ to intermediaries. Totals of such **payments** may be reported as '**miscellaneous payments to intermediaries**'./

"The payments listed below have been made to intermediaries in order to obtain or retain **business** with the **Government** of **or** an agency _____ thereof, for to influence legislation or regulation of the **Government** of _____ or an agency thereof'

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

"

Name

Signature

Date

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

"(f) 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.

"(g) 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.

"Article 7

"(a) 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 régime in southern Africa.

"(b) 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 régime in southern Africa in contravention of United Nations resolutions.

"(c) Each Contracting State shall submit annually, to the Secretary-General of the United Nations, reports on the activities or transnational corporations of its nationality which collaborate directly or indirectly with illegal minority régimes in southern Africa in contravention of United Nations resolutions.

"Article 8 /1/

"(a) Each Contracting State recognizes agrees to ensure that its national law provide-7 that if bribery or illicit payment are decisive in procuring the consent or 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.

"Article 9 /1/

"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.

"Article 10

"(a) The Contracting States shall inform each other upon request of measures taken in the implementation of this Agreement.

"(b) Each Contracting State shall biannually furnish, in accordance with its national laws, to the Secretary-General of the United Nations, information concerning its implementation of this agreement. Such information shall include legislation and administrative regulations, as well as general information on judicial proceedings and other measures taken pursuant to such

laws and regulations. Where final convictions have been obtained under laws within the scope of this Convention, information shall also be furnished concerning the case, the decision and sanctions imposed in so far as it is not confidential under the national law of the State which provides the information.

"(c) The Secretary-General shall circulate a summary of the information referred to in paragraph (ii) of this article to the Contracting States.

"(d) The Secretary-General shall organize periodically or at the request of Contracting States an exchange of views among them on issues relating to the implementation of this Agreement."

"(e) The Secretary-General shall study and analyse the information provided pursuant to paragraph (ii) and submit periodically a summary of this analysis to the Contracting States."

"Article 11

"1. Contracting States shall afford one another the greatest measure of assistance in connexion with criminal investigations and proceedings brought in respect of the offences referred to in article 1, within the scope of this Convention whether committed by natural or juridical persons. The law of the State requested shall apply in all cases.

"2. Mutual assistance shall, inter alia, include, as far as permissible under the law of the State requested and taking into account the need for preserving the confidential nature of documents and other information transmitted to appropriate law enforcement authorities:

"(a) Production of documents or other information, taking of evidence and service of documents, relevant to investigations or court proceedings;

"(b) Notice of the initiation and outcome of any public criminal proceedings concerning an offence referred to in article 1, to other Contracting States which may have jurisdiction over the same offence according to article 4.

"3. Contracting States shall upon request enter into negotiations towards the conclusion of bilateral agreements with each other to facilitate the provision of Judicial assistance in accordance with this article. Such agreements shall, inter alia, make provision for the taking of evidence and conduct of interviews under the law of the Contracting States."

"4. The provisions of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern in whole or in part mutual assistance in criminal matters.

"Article 12

"1. The **offences referred to in** article 1 shall be deemed to be included as extraditable **offences** in any extradition **treaty** existing between Contracting States. Contracting States **undertake** to include **the said offences as** extraditable **offences** in every extradition treaty to be concluded **between** them.

"2. 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/ /shall/ consider this Convention as the **legal** basis for extradition in respect of the offence. Extradition shall be **subject** to the other conditions provided by the **law** of the requested State.

"3. Contracting States which **do not make** extradition conditional on the existence of a treaty /shall/ /may at their option recognize the **offence** as an extraditable **offence between** themselves subject to the conditions provided by the law of the requested State.

"4. The **offence** shall be treated, for the purpose of extradition between Contracting States, as **if** it had been **committed** not only in the place in which it occurred but also in the territories of the States required to establish the jurisdiction in accordance with article 4, paragraph 1.

"SETTLEMENT OF DISPUTES

"Article 13 /1/

"(a) 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 ways should be sought on the basis of sovereign equality of States.

"/(b) 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.**

"ENTRY INTO FORCE

"Entry into force of the Agreement

"Article 14 /1/7

"Alternative 1

"(a) 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 article 3 '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.

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

"Reservation 3

"Article 15 /1/7

"(a) Any Contracting State may at the time of its signature, ratification, /acceptance or approval/ or accession, enter /a/ reservation/s/ with respect to the following articles:

"(b) . . .

"(c) . . .

"(d) No reservation shall be permitted in respect of any provision 3 of this Agreement other than those referred to in paragraph 1 of this article.

"(e) Any reservation entered at the time of signature shall be subject to confirmation at the time of ratification, /acceptance or approval/ or accession.

"(f) The entry and confirmation of any reservation in accordance with paragraphs (a) and (e) respectively of this article shall be communicated in writing to the depository.

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

7. Reservations were made by the representatives of the Federal Republic of Germany with regard to the "other business transactions", in the definition of

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"international commercial transactions" and by Japan with regard to article 4, paragraph 1 (a). With regard to article 4, paragraph 1 (c), it was agreed that at a later stage the Working Group would decide whether the term "national" in that paragraph included Juridical persons as well as natural persons and, if it did, what criteria were to be used to determine their nationality.

8. Another reservation was made by the representatives of the Federal Republic of Germany and the United Kingdom with regard to the deletion of the words "of a Contracting State" in the definition of the term "public official" contained in article 2.

B. Consideration of proposals and options other than an international agreement to combat corrupt practices

9. This agenda item was discussed by the Working Group at one informal meeting and at the 38th meeting, on 13 March 1978.

10. At the 38th meeting, the representative of Colombia, speaking on behalf of the Group of 77, stated that the Group attached equal importance to parts A and B of document E/6006 and that both parts deserved equal treatment. Recalling paragraph 3 of Economic and Social Council resolution 2041 (LXI), the representative of Colombia reaffirmed the position of the Group of 77 that the formulation of a code of conduct by the Commission on Transnational Corporations should be accorded the highest priority.

11. The Working Group discussed the item further at its 46th meeting, on 17 April 1978, using as a basis part B of document E/6006, entitled "Other relevant proposals and options", ^{2/} which it agreed should be included in the body of the present report as follows:

"PART B

"OTHER RELEVANT PROPOSALS AND OPTIONS

"1. In paragraph 1 of resolution 2041 (LXI) the Economic and Social Council had 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

^{2/} Several representatives pointed out that this question had not been discussed at the fourth and fifth sessions.

simultaneously the scope and content Of a possible international agreement to prevent and eliminate illicit **payments**, in *whattvtr form*, in *connerion* with international **commercial transactions** as *vttl as other relevant proposals* and options,

"3. During its third session the **Working Group** also discussed the relevant proposals and options contained in paragraphs **106-123** entitled "**Major issues to be considered** in the examination of **the** problem of corrupt practices, in particular **tribery**, in international commercial transactions by transnational and other corporations, their intermediaries and others involved" (**E/AC.64/7**). **They** included the **drafting** of a **model** national lav; 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 sn **international** agreement, *the* Working Group also decided that some of the **items** contained in part A *of document E/6006/7* should be **transferred to** part B for further consideration. The items-in question related to:

- "(a) The elimination of tsx shelters;
- "(b) Disclosure by **public** officials of their net vorth;
- "(c) Other corrupt practices.

The **Working Group** considered that these items could be dealt vith through both national **and** international action.

"National action

"5. The **Working Croup** **considered** various forms of measures which could be **adopted** in national **lav** to eliinatt tax shelters in respect of bribery and illicit payments. Among the specific proposals considered **were**: that **home** countries impost relatively high tax surcharges on the profits made from transactions tainted vith **bribery**; and that all countries adopt measures to ensure that tax law **violations** involving bribery and illicit payments **were** treated as criminal **offences per se**.

"6. The Working Group also considered a **proposal** in connexion **with the** item on **disclosure**, *namely*, that public officials be required by national lav to **disclose** their **net** worth upon assumption of office, at prescribed intervals and **at** the end of their **tens** of office.

"7. Lastly, the Working Croup considered a certification procedure in national lav, which vas described in **paragraph** 119 of document **E/AC.64/7**, by which the **officials** of all enterprises **dealing** vith any government agency **would 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 notional law to deal with the above and other related issues.

"International action

"9. The Working Group emphasized that the work on a code of conduct which the Commission on transnational corporations was 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 contained a specific item on corrupt practices and also noted that some of the other items raised issues which were interrelated with the existing 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."

XII. ORGANIZATION OF WORK

12. The Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices, established by Economic and Social Council resolution 2041 (LXI) and expanded to include all interested States by Council resolution 2122 (LXII), held its fourth and fifth sessions at United Nations Headquarters from 6 to 10 March and from 3 to 14 April, respectively.

13. The following States were represented at both sessions: Argentina, Australia, Belgium, Canada, Colombia, Cuba, Denmark, France, Germany, Federal Republic of, Ghana, Greece, India, Iran, Iraq, Italy, Japan, Mexico, Netherlands, Nigeria, Norway, Pakistan, Philippines, Spain, Sweden, Switzerland, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America, Venezuela and Zaire.

14. Algeria, the Holy See, Ireland, Israel, Kenya, the Libyan Arab Jamahiriya, Mali, the Niger, the Republic of Korea, Rwanda, the Sudan and Turkey were represented at the fourth session; and Barbados, Brazil, the Dominican Republic, Ecuador, Surinam and Zambia were represented at the fifth session only.

15. In the course of the two sessions the Working Group held 11 formal meetings (36th-46th) and 18 informal meetings.

16. The Working Group had before it the report of the Ad Hoc Intergovernmental Working Group on its first, second, third and resumed third sessions (E/6006), which it was agreed would continue to be the basic working document of the Group, and a draft report on its fourth session (E/AC.64/L.5 and Corr.1), prepared by the Rapporteur at the request of the Working Group.

A. Election of officers

17. At the 36th meeting, on 6 March 1978, the Working Group re-elected the following officers by acclamation:

Chairman: Mr. Farrokh Parsi (Iran)

Vice-Chairman: Mr. J. F. Botero (Colombia)

Rapporteur: Mr. Harold E. L. Acemah (Uganda)

The Working Group also elected by acclamation Professor M. R. Mok (Netherlands) to replace Mr. Junichi Nakamura (Japan) as Vice-Chairman, following the latter's resignation.

B. Adoption of the agenda and organization of work

18. At the same meeting the Working Group adopted the following agenda for its fourth session (E/AC.64/9):

/...

1. **Opening** of the **session**
2. **Election of officers**
3. Adoption of the **agenda** and organization or work
4. **Consideration** of proposals and options other **than** an international agreement **to** combat **corrupt** practices
5. **Drafting** of an international agreement to prevent **and** eliminate illicit payments in connexion **with international commercial** transactions
6. Draft provisional **agenda** for the fifth session **of the Working Group**
7. Adoption of the report of the **Working Group** to the **Economic and Social Council**.

19. At the 39th meeting, on 3 April 1978, the **Working Group** adopted the following **agenda** for its fifth session (E/AC.64/10):

1. **Opening of** the session
2. Election **of** officers
3. Adoption of the agenda and **organization of work**
4. **Drafting of** an international agreement to prevent and eliminate illicit payments in connexion vith international **commercial** transactions
5. Consideration of **proposals** and options other than an international agreement to combat corrupt practices
6. Adoption of the report.

IV. ADOPTION OF THE REPORT

20. At its 46th meeting, on 14 April 1978, the Working Group considered **the draft report** contained in documents A/AC.64/L.6 and Add.1 **and** 2 and adopted it as orally **amended** and revised.

Annex I

PROPOSAL BY DENMARK FOR AN ARTICLE ON RECORD KEEPING

Each Contracting State **will ensure**, under penalty of law, that the **records** of account **kept** by persons or companies resident or established **in** their territory **give** the precise identification of their operations, and **particularly** any payment to an intermediary, relating to **an international commercial** transaction in **which** they **take** part.

Information about such operations shall **be** obtained **by** the Judicial authorities from another Contracting State in accordance **with** the provisions for mutual judicial assistance in article 7.

Annex II

PROPOSAL BY JAPAN ON RECORD KEEPING

1. Each Contracting State shall ensure by appropriate measures that reasonably *accurate records* of payments including those relating to international commercial transactions be maintained by all persons and enterprises of its nationality engaged in such transactions.
2. The record maintained pursuant to paragraph 1 of this article shall be made available for the purposes of criminal investigation by its competent authorities relating to the offences provided for in article 4, paragraph 1.

Annex III

DRAFT PREAMBLE PREPARED BY THE SECRETARIAT AT THE REQUEST
OF THE WORKING GROUP AT ITS FIFTH SESSION a/

The State Parties to this Convention,

Recalling the provisions of paragraph 4 (a) of General Assembly resolution 3201 (S-VI) of 1 May 1974, containing the Declaration on the Establishment of a New International Economic Order, which provide for the regulation and supervision of the activities of transnational corporations,

Recalling also the provisions of section V of General Assembly resolution 3202 (S-VI) of 1 May 1974, containing the Programme of Action on the Establishment of a New International Economic Order, which emphasize, inter alia, the need to formulate, adopt and implement an international code of conduct for the operation of transnational corporations designed to promote their contribution to national developmental goals and world economic growth, while controlling and eliminating their negative effects,

Recalling further the provisions of General Assembly resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, in which the Assembly calls upon transnational corporations to desist from operating in a manner that violates the laws and regulations of the host States,

Convinced that corrupt practices, including bribery, by transnational and other corporations, their intermediaries and others involved, in violation of the laws and regulations of host countries, are detrimental to a viable international economic order as well as the national interests of host States,

Mindful of the provisions of General Assembly resolution 3514 (XXX) of 15 December 1975, on measures against such corrupt practices,

Determined to eliminate and control the incidence of such practices in international commercial transactions by appropriate national and international measures,

Convinced of the need to establish an international machinery to supplement the individual efforts of the Contracting States in preventing and combating such practices,

Recognizing the need for all States to enter into appropriate bilateral and multilateral arrangements to prevent and eliminate other corrupt practices,

Have agreed as follows:

a/ The Draft Preamble was not discussed at the fifth session of the Working Group.

/...

Annex IV

**PROPOSALS BY FRANCE FOR A CONVENTION ON THE ELIMINATION
OF BRIBERY IN INTERNATIONAL COMMERCIAL TRANSACTIONS**

Article 1

1. Any public official and any person holding elective office who solicits or accepts offers or promises or who solicits or receives gifts or other considerations in return for performing or refraining from the performance of an act falling within his functions or his employment, regular or otherwise, in connection with an international commercial transaction shall be deemed to have committed a criminal offence.

2. Any person who, in order to induce someone to perform or refrain from the performance of an act as provided in paragraph 1, resorts to promises, offers, gifts or other considerations shall also be deemed to have committed a criminal offence.

Article 2

Each Contracting State undertakes to make the offences referred to in article 1 punishable by severe penalties.

Article 3

For the purposes of this Convention:

1. The term "public official" shall refer to any administrative, judicial, military or equivalent civil servant, whether Principal or agent, of a public agency or of an agency subject to the jurisdiction of the public authorities, and to any citizen performing public functions.

2. The term "international commercial transaction" shall refer to any sale, contract or other business transaction with a central or local service or agency which under the laws of the State concerned is open for competition to foreign persons or enterprises.

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 1 when they are committed in its territory or by one of its nationals.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

A **Contracting** State shall, if it has jurisdiction under article 4 but does not extradite the **alleged** offender, **be obliged, without** exception whatsoever, to **submit** the case to its competent authorities for the purpose of prosecution. Those authorities shall take **their decision in the same manner as in the case of** any ordinary **offence** under the law of that State.

Article 6

1. The **offences** referred to in article 1 shall be **deemed** to be included as extraditable **offences** in any extradition treaty existing between **Contracting** States. **Contracting** States undertake to include the said **offences** as extraditable **offences** in every extradition **treaty** to be concluded between them.

2. 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 shall consider this Convention as the **legal** basis for extradition in respect of the **offence**. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. **Contracting** States which do not make extradition conditional on the existence of a treaty shall **recognize** the offence **as** an extraditable **offence** between themselves **subject** to the conditions provided by the law of the requested State.

4. The **offence** shall be treated, for the **purpose** of extradition between **Contracting** States, **as** if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their Jurisdiction in **accordance** with article 4, **paragraph** 1.

Article 7

1. Contracting States shall afford one another the **Greatest** measure of assistance in **connexion** with criminal **proceedings brought** in respect of the **offences** referred to in article 1. The law of the **State** requested shall **apply** in all **cases**.

2. The provisions of paragraph 1 of this article shall not **affect** obligations under any other treaty, bilateral or multilateral, **which governs** or **will govern**, in whole or in part, mutual assistance in **criminal matters**.
