



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
LIMITED

E/AC.64/L.1
2 February 1977

ORIGINAL: MCLISH

AD HOC INTERGOVERNMENTAL WORKING

GROUP ON CORRUPT PRACTICES

Second session, 31 January-

11 February 1977

Item 6 of the agenda. 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.

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

I. Preamble

11. Scope - illicit Payments in Connexion with International
Commercial Transactions

The treaty **would** encompass payments to public **officials** and **certain** fees and
commissions paid by any person related to:

- (i) sales of **goods** or services to a government **agency** or instrumentality by
a **foreign** enterprise or its local affiliate;
- (ii) agreements made **between** government **agencies** or instrumentalities and
foreign enterprises or their local affiliates **with** respect to **investment**
or the transfer of **technology**; and
- (iii) other official actions of a public official or public **body** of direct
commercial interest to a foreign enterprise or its local affiliate
(but not **including** routine **administrative** actions of a non-discretionary
character).

III. Rational Laws on Bribery

(a) Each Contracting State shall ensure that its criminal laws prohibiting bribery of its public officials apply to international commercial transactions and related official acts, as defined in this treaty.

(b) The offence shall include the offering, giving, demanding, soliciting or receiving of a bribe. The sanctions shall be the same as those generally applicable to bribery of public officials.

(c) Contracting States will endeavor to prosecute both those who offer or give bribes and those who demand, solicit or receive bribes in violation of their laws.

IV. International Co-operation and Judicial Assistance

(a) All Contracting States will co-operate in the investigation and prosecution of offenders by the competent law enforcement authorities of the Contracting State concerned.

(b) To this end, the Contracting States shall, upon request, agree to exchange through law enforcement authorities relevant and material information for the purpose of criminal investigation and prosecution of offences encompassed by Articles III and V (e) of the treaty, subject to provisions for confidentiality and such other arrangements as they agree upon to protect the integrity of law enforcement proceedings in both Contracting States and the civil rights of all persons involved.

V. Disclosure of Payments to Public Officials and Intermediaries

(a) The Contracting States would agree to establish by law or regulation uniform requirements for the disclosure of payments made to public officials or fees or commissions paid to intermediaries in order to secure the execution or performance of an international transaction with foreign government agencies or instrumentalities or to influence the performance of an official act. Specific disclosure provisions would be set forth in the treaty or an annex thereto.

(b) The basic principles of disclosure would include the following:

(i) Each Contracting State will require its nationals to report to a designated agency payments made by them or by their foreign affiliates, directly or indirectly, to public officials of any other Government (including Governments of non-Contracting States) or fees and commissions paid to intermediaries in order to secure the execution or performance of an international transaction with foreign government agencies or instrumentalities or to influence the performance of an official act of direct commercial interest to a foreign enterprise or its local affiliate.

- (ii) Each Contracting State will require all persons to report any payments made by them to its public officials and fees and commissions paid by them to intermediaries to secure the execution or performance of an international commercial transaction with its government agencies or instrumentalities or to influence the performance of an official act by its public officials of direct commercial interest to an enterprise. To avoid duplication of reports, a single report in the format established by the treaty may be utilized to comply with the provisions of this subparagraph and subparagraph (i).

(c) The treaty would define the payments to be reported as including payments or promises to pay anything of value. To avoid the burden of excessive reporting, transactions below a certain amount would be excluded and small payments would not be reported unless payments made in connexion with a particular transaction aggregate above a specified amount. The treaty would also prescribe the degree of detail to be reported. More detail, including the name of the recipient, would be reported in case of larger payments. No reports would be required in respect of payments (i) required by law (e.g., taxes and royalties), (ii) relating to official acts of a non-discretionary character, or (iii) made for the purchase of specific goods or technical, operational or advisory services (e.g., legal advice or accounting or advertising services) as opposed to representation to government agencies by sales agents, attorneys or other intermediaries provided the payments are not disproportionate to the value of the service. Also, normal salaries and general advertising or promotion expenses would not be reported.

(d) All reports would be published or made available for public examination in a timely manner as prescribed in the treaty.

(e) Contracting States would agree to establish criminal penalties for the offence of wilful failure to report and false reporting.

VI. Consultations and Dispute Settlement

The treaty would establish procedures for consultation concerning its implementation and related matters. Any dispute over the interpretation or application of the treaty that cannot be resolved by consultation would be settled by arbitration or other third party procedures.

VII. Definitions

- (a) Public official.
- (b) Government agency or instrumentality (including defined State enterprises).
- (c) Official act.
- (d) Payments.

(e) International commercial transaction.

(f) Person (natural or Juridical).

(g) Foreign enterprise.

(h) Local affiliate.

(i) Intermediary.