



STATEMENT OF THE G-77 AND CHINA DURING THE AD HOC COMMITTEE ON THE ELABORATION OF A CONVENTION AGAINST CORRUPTION, 5TH SESSION, 10-21/03/03 DELIVERED BY H.E. AMBASSADOR ROBERTO ABDENUR, PR OF BRAZIL

Mr. Chairman,

1. First of all, Mr. Chairman, I would like to express the G-77 and China's satisfaction at seeing you presiding over the concluding phase of our work in the Ad-hoc Committee.

2. On behalf of the Group, I would like to refer to our expectations at the conclusion of the readings of the evolving text of a draft convention against corruption, and the beginning of a phase of final negotiations on the texts of such convention. The work ahead will be arduous, bearing in mind that many of the articles that are pivotal to the convention still have to be agreed upon at a drafting level.

3. The Group is of the view that the proposed convention is addressing issues specifically linked to the fight against corruption, and therefore political considerations should not become a conditionality for implementing provisions of the proposed convention.

4. For us to succeed and fulfil the mandate of the GA in the next two sessions of the Committee we will have to consider some elements that were mentioned before by the Group and that will enable the proceedings of the Ad-hoc Committee to have the broadest participation of delegations. Particular attention should be paid to a few points regarding the logistics of the final negotiation, so that the Committee can operate with an adequate level of flexibility: (a) parallel meetings should be avoided as much as possible; (b) when a contested article is being discussed in a working group, the plenary should not be in session, or should only be considering matters that are in principle agreed upon; (c) a flexible approach should be implemented regarding the discussion of chapters such as the ones on "definitions" and "criminalisation", that are closely interrelated; (d) interpretation in all official languages should be provided for the consideration of those articles that are central to the draft convention; (e) the Group would like also to stress the importance of the documents produced and the need for them to be correctly translated.

5. The G-77 and China believes that a great deal of attention should be given to the draft articles regarding definitions, scope and criminalisation, strengthening of international cooperation and, technical assistance, and recovery of assets of illicit origin.

6. On the mandatory/optional nature of the preventive measures, we can work with an approach according to which such measures should be largely advisory/optional.

7. The case is clearly different with criminalisation and international cooperation. These two elements are central in an international convention, and for this reason they should be mandatory in nature, subject to domestic law.

8. We also strongly support the position that the provisions related to "International Cooperation" and "Return of Assets" should be applicable to both criminal and non-criminal investigations, including civil and administrative enquiries.

9. The G-77 and China considers that the points mentioned above are at the core of the proposed convention and hence various measures, including international cooperation, extradition and mutual legal assistance, should be strengthened, as much as possible building on the TOC Convention. These provisions should be

comprehensive, without leaving any gap, and therefore no offences covered in this convention should be treated as "political offences".

10. The Group favours a definition of public official that includes a wide range of functionaries and at all levels of the hierarchy (ie: functionaries of all branches of Government or any other person performing a public function even if contracted to perform such function).

11. Chapter III of the evolving text criminalises certain acts committed in the course of private sector activity. The Group supports the incorporation into the Convention of those areas where private sector activities affect the public interest.

12. Also in Chapter III, as regards the provision on illicit enrichment, the Group to supports the proposal of a draft article that suggests a solution for the problem of cooperation between states that have criminalised the conduct and those which have not done so.

13. It is in this vein that the Group supports the formulation "offences covered by the Convention" in place of the term "established by State parties under the Convention" wherever it appears on the text.

14. In the article on Jurisdiction, the Group supports the proposal to include the right of a State to establish its jurisdiction over an offence being an "affected State" (article 50, para. d bis).

15. It would also be convenient to follow the Travaux Préparatoires of TOC on the meaning of the expression final judgement or final conviction, in the sense that it should be construed as a "legally enforceable judgement" and not an absolutely final one.

16. The G-77 and China attaches great importance to the issue of "Return of Assets" to the country of origin and considers it should be recognized as its "inalienable right". Return of assets is the logical conclusion of the fight against corruption addressed by the Convention.

17. The Group has clearly expressed during the first readings of the rolling text the need to establish effective international provisions on seizure of assets illicitly acquired by means of corruption and their recovery by the country of origin.

18. In this sense, the convention should consolidate a comprehensive chapter on the recovery of assets, including provisions on preventive measures, cooperation and recovery mechanisms.

19. The G-77 and China believes that the proposed Convention against corruption should facilitate prompt and expeditious recovery and return of assets arising out of corruption. It is, therefore, our view that comprehensive provisions in the multilateral context as incorporated in the proposed convention would be more useful for this purpose rather than this issue being dealt with through bilateral treaties, as proposed by some Member States.

20. The Group is of the view that the monitoring mechanism should not be intrusive in nature, and should respect the sovereignty of States. It may be advisable to leave the specific nature and monitoring mechanism to the Conference of the State Parties.

Thank you, Mr. Chairman.