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Sectoral policy questions: preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin

Crime prevention and criminal justice

Prevention of corrupt practices and transfer of funds of illicit origin

Report of the Secretary-General

Summary

The present report has been prepared by the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention, in response to General Assembly resolution 56/186 of 21 December 2001 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin. It contains the responses provided by countries and by the United Nations system regarding measures adopted to implement resolution 56/186.

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I. Introduction

1. In resolution 56/186 of 21 December 2001, the General Assembly recognized the responsibilities of Governments to adopt policies at the national and international level aimed at preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin and stressed its belief that those practices need to be prevented and that funds of illicit origin transferred abroad need to be returned after request and due process. While recognizing the importance of national measures, the Assembly called for increased international cooperation, inter alia, through the United Nations system, in support of efforts by Governments to prevent and address the transfer of funds of illicit origin as well as to return such funds to the countries of origin and requested the international community to support the efforts of all countries to strengthen institutional capacity and regulatory frameworks for preventing corruption, bribery, money-laundering and the transfer of funds of illicit origin, as well as for returning such funds to the countries of origin.

2. In the same resolution, the General Assembly requested the Secretary-General to submit to the General Assembly, at its fifty-seventh session, a report on the implementation of resolution 56/186.

II. Preventing and combating corrupt practices and transfer of funds of illicit origin

A. Measures adopted by countries

3. Pursuant to resolution 56/186, the United Nations Centre for International Crime Prevention sent a note verbale to Member States seeking information on progress made in the implementation of the resolution. At the time of the preparation of the present report, substantive replies had been received from the following States: Azerbaijan, Bolivia, Brazil, Colombia, Croatia, Germany, Haiti, Republic of Korea, Mauritius, Mexico, Myanmar, Oman, Poland, Slovakia, Spain, Switzerland, Turkey and Ukraine.

Azerbaijan

4. The Presidential decree on strengthening the fight against criminality and enhancing law and order of 9 August 1994 designated the fight against corruption and bribery as one of the main priorities of national law enforcement activities. In 1998 and 2000, two Presidential decrees were signed, one on measures to fight economic crime, which dealt with offences related to the legalization of the proceeds of crime, and one on strengthening the fight against corruption. Pursuant to the second decree, a draft programme providing for the reform of the finance management and for the establishment of a special commission to prevent corruption was developed.

5. A draft law on corruption, prepared in consultation with experts from the Council of Europe, was submitted to Parliament and has passed its first reading. The new Criminal Code, in force since 1 September 2000, criminalized the legalization of the proceeds of illegal trafficking in drugs and psychotropic substances. However, there is still no special law in Azerbaijan on the laundering of the proceeds of crime. Azerbaijan is party to several international conventions, including the European Convention on Mutual Assistance in Criminal Matters of 1959 and the Minsk Convention on legal assistance and legal relationships in civil, family and criminal cases, concluded by the member States of the Commonwealth of Independent States on 22 January 1993.

Bolivia

6. In the latest reform of its Penal Code, contained in Law No. 1768 of 15 January 1997, Bolivia incorporated administrative penal provisions on the laundering of the proceeds of crimes relating to drug trafficking, corruption of public officials and crimes committed by criminal organizations. Bolivia has decided to include a specific provision dealing with all aspects of the laundering of income and capital. Such a provision is applicable even at times when the principal offence was committed in another country, provided that it is established as an offence in both States. In order to ensure the maximum effectiveness of law enforcement, Bolivia has adopted legislation on the confiscation of property and resources derived from the crime of money-laundering. In addition, the Financial Investigation Unit has been established (see article 185 ter of the Penal Code) and its statute was approved in pursuance of the Supreme Decree No. 24771 of 31 July 1997, thus setting out its role and functions.

7. In its Law No. 1768, Bolivia approved and ratified the Inter-American Convention against Corruption of 1996. Pursuant to this international obligation, Bolivia is working on a project to develop the National Integrity Plan and Campaign against Corruption, with a view to controlling corruption in public administration. Bolivia is determined to combat and eradicate corruption. In this connection, specialized laws will be drafted, including the Law on the Ethics Commission and Measures to Combat Corruption, the Law on Access to Information and the Code of Ethics. Bolivia also intends to amend its Penal Code, in order to incorporate criminal offences provided for in the Inter-American Convention against Corruption, including: (a) passive bribery, (b) active bribery, (c) administrative fraud, (d) conflicts of interests, (e) failure to fulfil obligations, (f) laundering of assets, (g) instigation, (h) participation and (i) concealment.

Brazil

8. Brazil indicated that the Commission on Public Ethics, created by a decree of the President on 26 May 1999, was responsible for reviewing the legislation on the ethical conduct of civil servants of the Federal Public Administration; for elaborating and proposing a Code of Conduct for authorities in the area of the federal executive branch of the Government; and for receiving and reviewing charges against authorities who are not performing in accordance with the Code of Conduct.[1]

9. In April 2001, the position of General Corregidor of the Union was created, with the responsibilities of assisting the President of the Republic in all matters related to public assets. The Corregidor also receives and examines charges of corruption in the executive branch of the Government. The Federal Secretary of Internal Affairs, a post created in 1994, maintains systematic control, surveillance and evaluation of the execution of the federal budget, government programmes and the management of public administrators.[2] Brazil has also indicated that complementary law No. 105, approved in January 2001, provides flexibility in the application of the rules concerning bank secrecy for financial operations, bank client information disclosure and capital movement. The purpose is to investigate practices of money-laundering of resources originating from illicit and criminal activities, including corrupt practices.

Colombia

10. Colombia has developed a Presidential programme to fight corruption, which provides civilians and local governments with the authority to fight this illicit practice through the adoption of transparency pacts involving municipal, local and central governments as well as civil society. Thirty-five pacts have been agreed upon, with the aim of increasing participation in government planning regarding public procurement law, selection and hiring of public officials and evaluation of public performance.

11. Several departments, specialized in the fight against corruption, were established in the country. The administrative Department of Security has created a specialized unit for crimes against public administration. The Congress has also approved a reform of the Criminal Code, which has included transnational bribery as a criminal offence. In the General Attorney's Office, a new prosecution unit for crimes against public administration has also been created. The unit has worked very closely with the Presidential anti-corruption programme; as a result, more than 1,000 investigations have been initiated and 2,200 persons prosecuted.

Croatia

12. On 15 September 1999, Croatia signed the Criminal Law Convention on Corruption of the Council of Europe, which was ratified on 8 November 2000. The Civil Law Convention on Corruption of the Council of Europe was signed on 2 October 2001 and its ratification is foreseen in 2002. The United Nations Convention against Transnational Organized Crime and its Protocols will also be ratified in 2002. On 1 December 2000, Croatia acceded to the Agreement establishing the Group of States against Corruption of the Council of Europe and it has passed the first evaluation round. A Council of Europe evaluation team concluded that Croatia has undertaken effective legislative measures in implementing the obligations derived from the Criminal Law Convention.

13. In order to enhance its action aiming at combating corruption, Croatia enacted new laws, including: the Law on Civil Servants and Employees (March 2001); the Tax Administration Law and the Law on Customs Services (13 July 2001), establishing the units for the detection of tax offences, both at

central and regional levels, and an independent internal control unit operating only at the central level to oversee the entire tax administration; the Law on Foundations and Associations (July 2001); the Law on the Office for the Fight against Corruption and Organized Crime (October 2001), expanding the confiscation regime and proscribing a special regime of freezing of proceeds of crime; the Law on Associations (entered into force on 1 January 2002); the Law on Public Procurement (entered into force on 1 January 2002); and the Law on Amendments to the Criminal Procedure Act (May 2002), which contributed to the speeding up and efficient processing and sanctioning of criminal offences related to corruption.

14. Croatia has also indicated that the following draft legislation, relevant to the fight against corruption, is currently in process: (a) draft law on local servants and employees in regional and local self-government entities; (b) draft law on local officials; (c) draft law on political parties which will contain new anti-corruption provisions on financing of political parties; and (d) a series of amendments to the Criminal Code for legislative procedure, with a view to enabling better quality processing of organized crime cases, especially of economic crime and corruption in international business transactions, in line with contemporary trends and international conventions.

15. On 21 March 2002, the Croatian Parliament adopted the national Programme and the plan of action against corruption (Official Gazette No. 34/2002).

16. In Croatia, the general confiscation regime, including the proceeds of corruption and corruption-related offences, is regulated by articles 80 (provisional measures) and 82 (confiscation) of the Criminal Code as well as articles 463 to 472 of the code of criminal procedures. Regarding money-laundering, the Law on the Prevention of Money Laundering was amended ("Official Gazette" No. 114/01) and entered into force on 20 December 2001, under which the scope of reporting suspicious transactions was extended and the time limit for temporary freezing of suspicious transaction was prolonged to 72 hours.

Germany

17. In Germany, the scope of application of the provisions on forfeiture and confiscation is not confined to the criminal offence of money-laundering. They relate generally to property obtained for criminal offences, or deriving from them, and moreover to objects deriving from criminal offences committed with intent, or used or intended for their commission or preparation.

18. Under German law, a foreign order corresponding to a forfeiture or confiscation order can, following exequatur proceedings, be enforced pursuant to section 48 of the Act on International Assistance in Criminal Matters, irrespective of whether the foreign order was made in criminal, civil or administrative proceedings. The decisive requirement is that the foreign decision must have a criminal act as its underlying basis. On the basis of section 49 (1) of the Act, the requirements for the admissibility of a foreign order corresponding to a forfeiture or confiscation to be enforced in Germany are the following: (a) there must have been a legally binding and enforceable foreign decision; (b) the decision must have been taken in conformity with the principles of the European Convention on Human Rights; and (c) upon corresponding transposition of the facts, a forfeiture or a confiscation order must have been possible under German law as well.

19. In connection with the areas which are not governed by a treaty, the Act on International Legal Assistance in Criminal Matters presents two ways in which legal assistance can be granted in connection with the forfeiture of assets that have been acquired by means of criminal offences. First, on the basis of section 56 of the Act, the country of origin can request legal assistance with execution from the State where the incriminating property is located. However, pursuant to section 56 (4) of the Act, if Germany grants assistance with execution in such a case, this would generally have the effect that the property declared forfeit would be transferred to the ownership of Germany (and not of the country of origin). Asset-sharing is not feasible. Pursuant to the Criminal Code, ownership of the asset or confiscated right passes, on a forfeiture or confiscation order, to the State when the decision takes final effect. Surrender itself is only admissible under the conditions set out in section 66 of the Act on International Assistance in Criminal Matters. According to this provision, the assets to be surrendered must be those which might serve as evidence in foreign proceedings, or which the person involved, or a participant, has obtained as a result of the offence forming the basis of the request, or which he/she obtained in exchange for such assets. Surrender shall be allowed only if the offence forming the basis

of the request constitutes a criminal offence or a regulatory offence and if assurances are given that the rights of third parties shall remain unaffected and provides that assets surrendered subject to a reservation are returned without delay upon request.

Haiti

20. Under articles 137 to 144 of the Criminal Code of Haiti, acts of corruption by all public officials in the administration, the judiciary or the military are punishable criminal offences. The penalties foreseen vary according to the gravity of the act and range from minor penalties administered by the police to serious criminal penalties. The Criminal Code of Haiti contains no specific provisions relating to money-laundering. However, this gap is filled by the provisions of the law of 21 February 2001on the laundering of assets derived from drug trafficking and other serious offences. A review of the Haitian legal codes is being conducted to respond to the many commitments arising from the conventions signed and/or ratified by Haiti.

Mauritius

21. The Government of Mauritius reported that it had adopted various pieces of legislation to prevent corruption, fraud, financial crimes, money-laundering and terrorism, including the Financial Intelligence and Anti-Money-Laundering Act, providing for the establishment and management of a Financial Intelligence Unit. The Unit is the central agency responsible for receiving, requesting, analysing and disseminating the disclosure of specific financial information to the investigatory and supervisory authorities. In addition, the Prevention of Corruption Act introduced new criminal offences for corruption, punishable with severe penalties, created the Independent Commission against Corruption and provided for the restraint and forfeiture of the proceeds of corruption and money-laundering, as well as for mutual assistance in relation to corruption and money-laundering. The Prevention of Terrorism Act also criminalized the financing of terrorist acts; provided for the freezing of funds and assets of terrorists and terrorist organizations; established terrorist acts as a serious criminal offence under domestic laws and regulations; and contained provisions for international assistance in the investigation and prosecution of the financing of terrorism and for the exchange of information and international collaboration on terrorist acts.

Mexico

22. Mexico has established legal mechanisms and institutions based on international legal instruments and on reciprocity to repatriate assets of illicit origin transferred from abroad, on the condition that such assets are instruments, objects or proceeds of crime. Mexico noted that the Federal Prosecutor's Office and the regulators of the banking, insurance and retirement funds have the authority to ask for documents or any information related to assets.

23. On 21 June 2000, Mexico was admitted as a member of the Financial Action Task Force. In accordance with the Task Force, a draft law to improve the provisions of the Criminal Code and the Federal Criminal Proceedings Code concerning money-laundering has been prepared. In order to fight corruption through ensuring transparency, preventing illicit practices and prosecution, Mexico has reformed the following laws: the Public Procurement and Tender Proceedings Law (January 2000); the Federal Supreme Auditing Law (December 2000); the Federal Public Service Responsibility Law (March 2002) and the Transparency and Information Federal Law (June 2002).

Myanmar

24. Myanmar reported that it had taken a series of measures against corruption, bribery, money-laundering and the transfer of funds of illicit origin by enacting a law for taking action against the owning and trading of properties obtained by illegal means (1986 Peoples Congress Law No. 3) as well as the Narcotic Drugs and Psychotropic Substances Law, 1999. The Control of Money Laundering Law is to be enacted by the State Peace and Development Council in the near future and due consideration has been taken concerning preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin.

Oman

25. In its reply, Oman referred to its decree No. 7/74 of 1974, issued in connection with the enactment of the Oman Criminal Law, which provides for the criminalization of most operations emanating from acts

of corruption. Bribery in the Government sector is criminalized under articles 155, 156, 157 and 158 of the Law, which provide for the punishment of government officials by imprisonment for a period of up to 10 years, a fine equivalent to at least the value of the bribe and permanent dismissal from office. The individual giving a bribe and the mediator are also subject to punishment. Under article 159 of the same Law, embezzlement of public funds is a criminal offence, punishable by imprisonment for a period of up to 10 years and by a fine equivalent to three times the value of the embezzled funds. The official is also required to return the embezzled funds or items and is deprived of the right to occupy any government office.

26. Article 160 of the penal code deals with the criminalization of the abuse of the power and functions of government office. Officials found to have used their position to benefit or harm a third party may be imprisoned for a period of three months to three years and receive a fine of 20 to 100 riyals. Under decree No. 72/2001, the definition of public official in national legislation was expanded to cover all those working in private institutions or associations of a public utility nature or in companies or private institutions in which an administrative unit of the State has, in any form, a share in their capital or financial resources.

27. The Law of Financial Control, issued by decree No. 55/2000, has strengthened the ability of Oman to counter possible acts of corruption. Under the Law, officials are able to protect the State's public funds by ascertaining the appropriateness of the internal control systems, the soundness of financial transactions and accounting records and the degree of their adherence to the laws and regulations relating to financial and personnel matters.

28. The Capital Market Law, issued by decree No. 80/98, covers many aspects of the fight against corruption through the supervisory role played by the Capital Market Authority for the Muscat Securities Market, which aims to protect the dealers and the smooth negotiation of securities by exercising control over the companies operating in the Muscat Securities Market. To provide special protection, the Capital Market Law requires that, when establishing a securities company, the company's founders, directors and board members must be free, for a period of five years, of conviction of a felony, a misdemeanour or any crimes provided for in the Commercial Companies Law or the Trade Law. In addition, these individuals must not have been declared bankrupt, unless he/she was rehabilitated, within the same period of time.

29. The Commercial Companies Law, issued by decree No. 4/1974, and its amendments, provide additional protection against any practices relating to acts of corruption, while the Banking Law, issued by decree No. 114/2000, contains a number of provisions and obligations imposed on the banking sector. The Law on Combating Narcotic Drugs and Psychotropic Substances, issued by decree No. 17/99, contains a special chapter on the criminalization of laundering of monies emanating from the illicit trafficking in narcotic drugs and psychotropic substances.

30. The Money-laundering Law, enacted by decree No. 34/2002, contains provisions for the prevention and prohibition of money-laundering and deals with various aspects of the problem and its control. The Law covers the verification of clients' identification and obliges institutions to put internal control procedures in place and to develop programmes for combating money-laundering. It also obliges institutions and natural and legal persons to report transactions that they suspect of being in violation of that Law. The Law also permits the authorities concerned to exchange information with other States that are bound by a ratified convention with the Sultanate or bound by a condition of reciprocity. It governs the powers vested in the Public Prosecution to take the necessary measures to seize the funds or property relating to crime or its proceeds and to provide any evidence that makes it possible to identify such funds or property. The Public Prosecution, at the request of a competent authority in other States that are bound by a ratified convention with the Sultanate or bound by a condition of reciprocity, may order the tracking or seizure of the funds, property or instrumentalities connected with an act of money-laundering.

31. In accordance with the above Law, a National Committee against Money Laundering has been established. The membership of the Committee consists of representatives from all government agencies concerned with the crime of money-laundering. The Committee is responsible for developing general policies and issuing guidelines in connection with the prohibition and combating of money-laundering, studying and following up on world developments in the area of money-laundering, providing recommendations for the development of public policies and guidelines, proposing appropriate

amendments to the Law and developing programmes to qualify and train those working in the field of combating money-laundering.

32 In accordance with the same Law, Oman has adopted the principle of international cooperation in combating the crime of money-laundering, tracking perpetrators and extraditing them to other States and implementing the provisions issued in this regard, in a manner consistent with the Sultanate's laws in this area and the ratified conventions, on condition of reciprocity.

Poland

33. The Polish Penal Code criminalizes the following forms of corruption: (a) passive and active bribery of national public officials, public officials of foreign countries or international organizations; (b) influence peddling; and (c) money-laundering. The Code also criminalizes aiding and abetting in the offences listed above and includes other regulations providing that individuals may be deprived of profits deriving from an offence. Furthermore, it empowers courts to order a legal person to return financial benefits derived from an offence in cases where a perpetrator, who acted on behalf of this legal person, obtained the financial benefit.

34. The Polish Code of Criminal Procedure permits the carrying out, within Poland, of the sentences of foreign courts for confiscation, forfeiture or seizure of property deriving from offences. The protection of witnesses and other persons cooperating with law enforcement authorities may be provided on the grounds of the regulations on anonymous witnesses and crown witnesses (Act of 25 June 1997). The Fiscal Criminal Code criminalizes offences connected with carrying out of accountancy contrary to the rules; while the Banking Law Act of 29 August 1997 introduces a provision on the revocation of bank secrecy at the request of a court or a public prosecutor acting to carry out a request of the authorities of a foreign country.

35. The Polish Act on Customs Service of 24 July 1999 included a series of provisions aimed at reducing the possibility of corrupt practices within the customs service as well as a Customs Ethics Code, which elaborated rules and standards of behaviour for customs officers.

36. Regarding the transfer of funds of illicit origin, according to the Act on Preventing the Entry into Financial Circulation of Property Values Originating from Illegal or Undisclosed Sources of 16 November 2000, the customs service is obliged to inform the General Inspector of Financial Information immediately of any circumstances that may indicate activities aimed at the entry into financial circulation of property values originating from illegal or undisclosed sources. The customs service regularly sends information to the central body (i.e. Treasure Inspection Department of the Ministry of Finance) on any matter that may indicate activities connected with money-laundering by trade operators. The information mainly concerns cases of overestimating the customs value of goods declared for export. In addition, the customs administration, by virtue of the Act on Foreign Currency of 18 December 1998, performs foreign currency border control and foreign currency control of post parcels.

Republic of Korea

37. The Republic of Korea indicated that the following measures have been taken to prevent corrupt practices and the transfer of funds of illicit origin: (a) adoption of the Foreign Transaction Act; and (b) establishment, in November 2001, of the Financial Intelligence Unit.

38. Regarding the return of funds of illicit origin, the Republic of Korea indicated that it had no specific criminal procedure to regulate the return of funds of illicit origin. The problem is, however, being dealt with through the application of the Act on International Judicial Mutual Assistance in Criminal Matters and the Criminal Act, which provide that an asset that is not the property of a person other than the criminal, or which was acquired by a person other than the criminal, with the knowledge of its nature after commission of the crime, may be confiscated in whole or in part. In addition, funds of illicit origin obtained through corruption are subject to confiscation by the court and may be seized by the investigative authority as a preliminary measure.

39. The following mechanisms could be employed to return funds of illicit origin using civil procedures. The foreign State (or a foreign national) may directly file a civil suit in court in the Republic of Korea to transfer such funds to the country of origin. The admissibility of a party to the suit shall not be denied for the reason of not holding the nationality of the Republic of Korea. If the grounds for the request are found to be

reasonable, the funds of illicit origin will be returned to the country of origin. Alternatively, a foreign State (or a foreign national) from which the funds originated may file a suit against a national of the Republic of Korea, on the basis of international judicial mutual assistance in civil matters under an assistance treaty for international judicial mutual assistance in civil matters or under guarantee of reciprocity, provided that the case complies with the requirements provided in articles 203 and 476 of the Civil Procedure Act.

Slovakia

40. The Central Coordination Unit for Combating Corruption, which was created in December 2002, is responsible for developing the National Programme to Combat Corruption as well as for coordinating the measures taken by different government agencies and ministries. The objective of the National Programme, approved by the Government in June 2000, is to reduce corruption, primarily in public life and in the use of public funds. An Action Plan to Combat Corruption was approved by the adoption of Government resolution No. 949/2000 of 22 November 2001.[3] Slovakia indicated that the Freedom of Information Act, which entered into effect on 1 January 2001, is one of the core elements of the National Programme to Combat Corruption. In addition, pursuant to Government resolution 461/2000, a Steering Committee on Combating Corruption was established to put in place a nationwide alliance and to facilitate the development of action plans.

41. The recommendations of the Organisation for Economic Cooperation and Development (OECD) Working Group on Bribery of Foreign Public Officials have been reflected in the content of a draft act, which will amend the Criminal Code and the Code of Criminal Procedure. On 8 June 2000, Slovakia signed the Civil Law Convention on Corruption of the Council of Europe. The Group of States against Corruption of the Council of Europe carried out its evaluation of Slovakia in September 2000.

42. To enhance the efficiency of the criminal justice system, Slovakia amended the Penal Code and the Code of Criminal Procedure to make it more responsive to present and emerging concerns. It also adopted the Act on Judges, which contains a special section on disciplinary proceedings against judges and simplifies administrative aspects of proceedings, and amended the Act on the Judicial Council and the Prosecution Act. It further reviewed the case management system to accelerate court proceedings and consistently guarantee the constitutional right to a lawful judge.

43. In the fight against money-laundering, Slovakia has amended Act No. 367/2000 on the Prevention of Legalization of Proceeds of Crime (Money Laundering Act) to fully comply with the 25 evaluation criteria of the Financial Action Task Force and to respond to directive 2001/97/EC of the European Parliament. The need to amend Act No. 367/2000 arose in connection with: the scope of institutions and persons subject to the Act; identification and ascertainment of the real owner of financial means; putting an unusual business transaction on hold; and ensuring immunity from legal liability in cases of bona fide execution of certain tasks imposed by institutions and persons subject to the Act. The proposed amendments to the Money laundering Act respond to needs in the fight against terrorism, included by obliging institutions and persons subject to the Act to report business transactions that involve a suspicion of the financing of terrorism to the financial police. The above amendments were submitted for approval to the European Parliament in April 2002. It is expected that the amendments will be approved in June 2002 and will enter into force on 1 January 2003.

44. Slovakia has also indicated that the Finance Intelligence Unit receives and verifies reports on unusual business transactions. Its work is supplemented by the work of executive departments of financial police that conduct further investigation in cases of confirmed suspicions of money-laundering.

Spain

45. In its reply, Spain made reference to the information contained in the report of the Secretary-General on preventing and combating corrupt practices and illegal transfer of funds, submitted to the fifty-sixth session of the General Assembly (A/56/403, para. 54). It indicated that the offences of corruption in international commercial transactions were introduced into article 445 bis of its Criminal Code through the adoption of organic law 3/2000 of 11 January, owing to the ratification of the OECD convention on the subject, which was signed on 17 December 1997.

Switzerland

46. Switzerland reported that, regarding mutual assistance in criminal matters, the return of objects and assets has been governed by law since 1 February 1997. There are two distinct forms of return: at the end of mutual assistance proceedings, objects or assets provisionally seized may, on request, be returned to the competent foreign authority, either to be confiscated or to be returned to the entitled parties abroad.

47. The draft federal law on the sharing of confiscated financial assets empowers Swiss authorities to conclude sharing agreements with foreign States. The different parties to such an agreement agree on the distribution formula. As a general rule, assets are shared equally among the States concerned, but the draft law provides that, depending on the nature of the offence or other factors, it is possible to return all the assets to the requesting State. With regard to this last element, the draft law aims to give concrete expression to a practice already broadly applied in Switzerland.

Turkey

48. Turkey reported that, in September 2001, it signed a series of Council of Europe conventions, including the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Civil Law and Criminal Law Conventions on Corruption. In January 2002, Turkey ratified the International Convention for the Suppression of the Financing of Terrorism.

49. Turkey has also stated that the report of the Secretary-General on preventing and combating corrupt practices and illegal transfer of funds, submitted to the fifty-sixth session of the General Assembly (A/56/403), should be amended as follows: in subparagraph 60 (b), “two billion” should read “one billion”; in subparagraph 60 (e) “September 1998” should read “September 1997”; subparagraph 60 (f) should read “... in accordance with the implementation of Law No. 4208 adopted in July 1997 issuance of the ...”; subparagraph 61 (c), first sentence, should read “Articles, 7 and 9 of Law No. 4208 also specifies”; the following sentence should be added to subparagraph 61 (c) “In accordance with article 7 of Law No. 4208, all the property and assets, including the returns derived from them, in the scope of dirty money on the corresponding value, in case the property and assets could not be seized, shall be subject to confiscation.”; in subparagraph 61 (e), the second sentence should read “The Financial Crimes Investigation Board as a Financial Intelligence Unit established”; and in subparagraph 61 (e), the last sentence should read “... This Law No. 4422 covers”.

Ukraine

50. Ukraine reported that the law on “fighting corruption” (October 1995) foresees administrative liability for acts of corruption and that, in order to implement the Strategy for Fighting Corruption for 1998-2005 (Decree of the President of Ukraine No. 367/98 of 24 April 1998), a set of coordinated measures, approved by the Cabinet of Ministers, to prevent and detect corruption are developed on a yearly basis. Currently, a number of legislative measures have been drafted to prevent and fight the legalization of the proceeds of crime. In this connection, Presidential decrees have been issued on strengthening the fight against the concealment of incomes from taxation and the laundering of proceeds of crime (No. 813/2000 of 22 June 2000); measures to fight the laundering of the proceeds of crime (No. 532/2001 of 19 July 2001); and measures to prevent the laundering of the proceeds of crime (No. 1199/2001 of 10 December 2001). In addition, during 2001, relevant changes were made in the law on “banks and banking activities”. Ukraine also indicated that article 209 of the Criminal Code, which entered into force on 1 September 2001, provides for criminal liability for the commitment of those offences. In accordance with the guidelines developed by the Financial Action Task Force, a draft law on preventing and counteracting the laundering of the proceeds of crime has been prepared and submitted to the Parliament.

51. Ukraine has signed and ratified the Council of Europe Convention on the Laundering, Search, Arrest and Confiscation of the Proceeds from Crime and both the Criminal Law and the Civil Law Conventions on Corruption of the Council of Europe, which are currently being prepared for ratification.

B. International initiatives

1. United Nations

52. The attention of the General Assembly is drawn to the fact that the activities of the United Nations Office for Drug Control and Crime Prevention and, in

particular of its Centre for International Crime Prevention, against corrupt practices have been extensively analysed in the report of the Executive Director on the work of the United Nations Centre for International Crime Prevention, submitted to the Commission on Crime Prevention and Criminal Justice at its eleventh session (E/CN.15/2002/2 and Corr.1). The attention of the Assembly is also drawn to the report of the Secretary-General entitled "Strengthening of the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity" (A/57/153), in particular chapter VIII B dealing with the global programme against corruption.

International Conference on Financing for Development

53. The need to fight corruption at all levels was underlined in the Monterrey Consensus,[4] adopted by the International Conference on Financing, held in Monterrey, Mexico, from 18 to 22 March 2002. In that Consensus, Member States recognized that corruption is a serious barrier to effective resource mobilization and allocation and that it diverts resources away from activities vital for economic and sustainable development to the eradication of poverty. Emphasis was also given to good governance as essential for sustainable development and to the fact that sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation. Commitment was also expressed for: negotiating and finalizing, as soon as possible, a United Nations Convention against Corruption in all its aspects, including the question of repatriation of funds illicitly acquired to countries of origin; and promoting stronger cooperation to eliminate money-laundering.

United Nations Ad Hoc Committee for the Negotiation of a Convention against Corruption

54. The Ad Hoc Committee for the Negotiation of a Convention against Corruption, whose terms of reference were adopted by General Assembly resolution 56/260 of 31 January 2002, held its first session in Vienna from 21 January to 1 February 2002, at which it began its first reading of the draft convention against corruption.[5] The reading was completed during the second session of the Ad Hoc Committee, held from 17 to 28 June 2002.[6]

55. On the occasion of the second session, upon a proposal presented by the Government of Peru, the Centre for International Crime Prevention organized a one-day technical workshop on the issue on "asset recovery". The purpose of the workshop was to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of the transfer of funds of illicit origin derived from acts of corruption and the return of such funds. A summary of the discussion is contained in the report of the second session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption.[6]

56. In accordance with Economic and Social Council resolution 2001/13, the Centre for International Crime Prevention has started the preparation of a global study on the transfer of funds of illicit origin, in particular funds derived from acts of corruption, and its impact on economic, social and political progress, in particular in developing countries. The study will include innovative ideas regarding appropriate ways and means of enabling the States concerned to obtain access to information on the whereabouts of funds belonging to them and of recovering such funds. The study will be submitted to the Ad Hoc Committee for the Negotiation of a Convention against Corruption.

2. Intergovernmental organizations

International Monetary Fund

57. The International Monetary Fund (IMF) reported that the basis of the intensified work of the Fund in the areas addressed by resolution 56/186 has been the IMF Action Plan on the Intensified Fund Involvement in Anti-Money Laundering Work and Combating the Financing of Terrorism of November 2001.[7] In particular, the involvement of the Fund, often joined by the World Bank, in anti-money-laundering work, which already covered financial sector supervisory issues, has been expanded to include combating the financing of terrorism as well as to cover legal and institutional framework issues. The IMF's offshore financial centre assessment programme has been accelerated and the technical assistance provided by IMF, in cooperation with the World Bank, has been increased in response to the request of member States to strengthen anti-money-laundering activities and combating terrorist regimes.

World Customs Organization

58. The anti-money-laundering initiative of the World Customs Organization (WCO) is built on a variety of activities, including: the organization of several international meetings on money-laundering; and the running of the information and communications system that will link all customs administrations and 11 Regional Intelligence Liaison Offices for enforcement purposes as well as for the administration of the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, which entered into force on 21 May 1980. In addition, the WCO secretariat has carried out a survey of all member States to research the current competence on border control of proceeds of crime and has created a training module on money-laundering and an awareness-raising videotape.

59. Integrity in customs became a priority in 1993, when the Council agreed the adoption of the Arusha Declaration on Integrity in Customs. The Declaration contains 12 specific elements designed to improve the efficiency of customs administrations and reduce or eliminate opportunities for corruption. The WCO secretariat is currently drafting a revised version of the Arusha Declaration, which will be approved by the end of 2002. In order to further promote integrity, WCO has developed a model code of conduct that describes the ethical norms of customs and sets out the minimum required attitude and behaviour expected of all customs officers, including effective disciplinary measures.

60. The WCO self-assessment guide is a critical tool, which can be used by customs administrations when measuring existing risks within their organizations against an accepted international integrity management model. The WCO has also developed a comprehensive training course to assist customs administrations to develop and implement comprehensive anti-corruption strategies. In addition, the secretariat is planning to conduct regional best practice seminars and has established an Integrity Resource Centre designed to provide members with access to a wide range of integrity-related information and resource material.

III. Conclusions

61. **The analysis of the measures taken by Member States as well as by the United Nations system and relevant intergovernmental organizations confirm the high priority attached by the international community to the fight against corruption, including the problem of the transfer of funds of illicit origin and the return of such funds**.

62. **As indicated in previous reports of the Secretary-General on this subject, the future United Nations Convention against Corruption, the negotiations for which are currently taking place, represents an unique opportunity to take stock of what has proved to be workable and feasible in the fight against corruption. Such an undertaking will lead to the development of a truly global instrument for addressing the concerns of the international community about corruption and reflecting the commitment of Member States to cooperate in this field**.

63. **In view of the fact that the question of the transfer of funds of illicit origin and the return of such funds has not been specifically regulated by any of the existing international legal instruments against corruption, and considering that national legislation in many parts of the world is inadequate, the elaboration of the new United Nations convention can make a significant contribution to the fight against corruption. The work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption will be particularly relevant as the Committee will benefit from the wisdom and the findings of the global study on the transfer of funds of illicit origin, as mandated by Economic and Social Council resolution 2001/13**.

Notes

[1] See www.planalto.gov.br/etica.

[2] Additional information on the Federal Secretary of Internal Affairs can be found at www.sfc.fazenda.gov.br.

[3] See www.government.gov.sk (English only).

[4] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.11.A.7), chap. I, resolution 1, annex.

[5] A/AC.261/4.

[6] A/AC.261/7.

[7] The Action Plan on Intensified Fund Involvement in Anti-Money Laundering and Combating the Financing of Terrorism can be referenced at http://www.imf.org/

external/np/mae/aml/2001/eng/110501.htm. Further details are found in the paper entitled Intensified Work on Anti-Money Laundering and Combating Financing of Terrorism — Joint Progress Report on the Work of the IMF and the World Bank, which can be accessed on the web at: http://www.imf.org/external/np/mae/aml/2002/eng/041702.htm.