AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

105TH CONGRESS, 2d Session | SENATE | TREATY DOC. 105–39

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

INTER-AMERICAN CONVENTION AGAINST CORRUPTION ("THE CONVENTION"), ADOPTED AND OPENED FOR SIGNATURE AT THE SPECIALIZED CONFERENCE OF THE ORGANIZATION OF AMERICAN STATES (OAS) AT CARACAS, VENEZUELA, ON MARCH 29, 1996. THE CONVENTION WAS SIGNED BY THE UNITED STATES ON JUNE 27, 1996, AT THE TWENTY-SEVENTH REGULAR SESSION OF THE OAS GENERAL ASSEMBLY MEETING IN PANAMA CITY, PANAMA

APRIL 1, 1998.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
59–118 WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 1, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Inter-American Convention Against Corruption ("the Convention"), adopted and opened for signature at the Specialized Conference of the Organization of American States (OAS) at Caracas, Venezuela, on March 29, 1996. The Convention was signed by the United States on June 27, 1996, at the twenty-seventh regular session of the OAS General Assembly meeting in Panama City, Panama. In addition, for the information of the Senate, I transmit the report of the Department of State with respect to the Convention.

The Convention was the first multilateral Convention of its kind in the world to be adopted. The provisions of the Convention are explained in the accompanying report of the Department of State. The report also sets forth proposed understandings that would be deposited by the United States with its instrument of ratification. The Convention will not require implementing legislation for the United States.

The Convention should be an effective tool to assist in the hemispheric effort to combat corruption, and could also enhance the law enforcement efforts of the States Parties in other areas, given the links that often exist between corruption and organized criminal activity such as drug trafficking. The Convention provides for a broad range of cooperation, including extradition, mutual legal assistance, and measures regarding property, in relation to the acts of corruption described in the Convention.

The Convention also imposes on the States Parties an obligation to criminalize acts of corruption if they have not already done so. Especially noteworthy is the obligation to criminalize the bribery of foreign government officials. This provision was included in the Convention at the behest of the United States negotiating delegation. In recent years, the United States Government has sought in a number of multilateral fora to persuade other governments to adopt legislation akin to the U.S. Foreign Corrupt Practices Act. This Convention represents a significant breakthrough on that front and should lend impetus to similar measures in other multilateral groups.

I recommend that the Senate give early and favorable consideration to the Convention, and that it give its advice and consent to ratification, subject to the understandings described in the accompanying report of the Department of State.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 24, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Inter-American Convention Against Corruption ("the Convention"), adopted and opened for signature at the Specialized Conference on Corruption of the Organization of American States (OAS) in Caracas, Venezuela, on March 29, 1996. The Convention was signed by the United States on June 27, 1996, at the twenty-seventh regular session of the General Assembly of the OAS meeting in Panama City, Panama. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

To date, twenty-three states have signed the Convention. Eight states (Paraguay, Bolivia, Mexico, Peru, Ecuador, Venezuela, Costa Rica, and Argentina) have deposited their instruments of ratification. The Convention entered into force on March 6, 1997.

The Convention is the first instrument of its kind in the world to be adopted. It establishes a treaty-based regime of obligations among the OAS member states to combat corruption, including various forms of cooperation analogous to those that exist pursuant to a number of multilateral law enforcement treaties to which the United States is a party. The Convention will enhance the United States' ability to cooperate with, and receive assistance from, other countries in the hemisphere in connection with efforts to prevent, investigate, and prosecute acts of corruption. The Convention will not require implementing legislation for the United States. As further discussed below, the existing bodies of laws and regulations in the United States will be adequate to satisfy the Convention's provisions regarding requirements for legislation, and the other provisions contained in the Convention are self-executing and will not require additional implementing legislation.

The Convention consists of a preamble and twenty-eight articles. Article 1 ("Definitions") defines the following terms: "public function," "public official," "government official," "public servant" and "property." With respect to the definitions of the first four of the terms listed above, it was agreed by the negotiators that the term "at any level of its hierarchy", which is contained in such definitions, was intended to clarify the "vertical" scope of application of the Convention; *i.e.,* that the Convention would cover officials ranging from those at the very top of the government bureaucracy, such as Cabinet-level officials, to those at the lowest levels, such as

clerks. The phrase was included at the behest of certain delegations who expressed concern that some of the corruption laws that exist in their countries do not reach officials at the very top levels of government, or, alternatively, those at the lowest levels.

However, the negotiators expressly discussed and understood that the phrase "at any level of its hierarchy" was not intended in this Convention to define the scope of application of the Convention with respect to constituent units of federal states, nor was the Convention as a whole intended to impose obligations with respect to the conduct of state or local officials. To emphasize this point, upon conclusion of the negotiations at the final session of the specialized conference in Caracas, the head of the U.S. negotiating team read the following statement into the record:

> The U.S. would like to reaffirm for the record the statement made earlier by the President of the Working Group for the article on definitions that the conclusions of the Working Group reflect the fact that countries with federal systems of government may not be able to bind their states and municipalities to the obligations under the Convention.

This statement was seconded at the conference by the delegation from Canada and from other States with federal systems. To confirm our understanding on this point, I recommend that the following understanding to Article I be included in the United States instrument of ratification:

> The Government of the United States of America understands that the phrase "at any level of its hierarchy" in the first and second subparagraphs of Article 1 refers, in the case of the United States, to all levels of the hierarchy of the federal government of the United States, and that the Convention does not impose obligations with respect to the conduct of officials other than federal officials.

Article II ("Purposes") describes the purposes of the Convention, which are to promote and strengthen the development by each of the States Parties of the necessary mechanisms to prevent, detect, punish, and eradicate corruption; and to promote, facilitate, and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions against corruption in the performance of public functions and acts of corruption specifically related to such performance.

Article III ("Preventive Measures") sets forth a list of measures that the States Parties "agree to consider the applicability of" within their own institutional systems, for the purpose of advancing the goals specified in Article II. These include measures to "create, maintain, and strengthen," *inter alia,* the following: standards of conduct for the correct, honorable, and proper fulfillment of public functions and mechanisms to enforce such standards; instruction to government personnel to ensure proper understanding of their responsibilities and ethical rules; systems for registering the income, assets and liabilities of government officials; open, equitable, and efficient systems of government hiring and procurement of goods and services; government revenue collection and control systems

that deter corruption; laws that deny favorable tax treatment for expenditures made in violation of anti-corruption laws; systems for protecting public servants and citizens who, in good faith, report acts of corruption; oversight bodies to implement modern anti-corruption mechanisms; and deterrents to the bribery of domestic and foreign government officials, such as requirements for publicly held companies and other types of associations to maintain books and records that accurately reflect the acquisition and disposition of assets, and to have sufficient internal accounting controls.

Article IV ("Scope") states that the Convention is applicable provided that the alleged act of corruption has been committed, or has effects, in a State Party.

Article V ("Jurisdiction") enunciates obligations imposed on the States Parties to establish their jurisdiction over offenses covered under the Convention. Specifically, this Article obligates each State Party to adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory. The Article also obligates each State Party to establish jurisdiction over covered offenses by individuals who are in its territory but whom it declines to extradite on the grounds of the nationality of the alleged criminal. In addition, the Article enables, but does not require, each State Party to establish jurisdiction over offenses covered by the Convention when such offenses are committed by its nationals or persons who habitually reside in its territory. Finally, the Article makes clear that this Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VI ("Acts of Corruption") is one of the key provisions of the treaty, as it specifies the acts of corruption to which the Convention applies. In summary terms, such acts are: the solicitation or acceptance by, or the offering or granting to, government officials of bribes or benefits in exchange for any act or omission in the performance of his public functions; any act or omission by a government official in the discharge of his duties for the purpose of illicitly obtaining benefits for himself or for a third party; the fraudulent use or concealment of property derived from any of the acts contemplated in this Article; and participation in the commission of, attempt to commit, or any association or conspiracy to commit, any such acts. The Article also renders the Convention applicable with respect to any other act of corruption as agreed to between or among two or more States Parties.

Article VII ("Domestic Law") requires that the States Parties, to the extent they have not yet done so, adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the acts of corruption described in Article VI, as well as to facilitate cooperation among themselves pursuant to the Convention.

At various times during the negotiations, the U.S. delegation described the extensive network of laws already in place in the U.S. that address the various acts of corruption covered under the Convention. Based on the discussions held at the negotiating sessions, the U.S. negotiators do not believe that it is the expectation of any of the other negotiating delegations that the United States would

be required to enact any laws beyond those that it already has in place. Indeed, the opinion was voiced that one of the objectives of the Convention is to have the rest of the nations of the hemisphere develop a body of laws on corruption comparable to that which exists in the United States.

There is, however, no single federal anti-corruption law in the United States that uses exactly the terms used in this Convention. Moreover, the network of United States anti-corruption laws is extensive, but not every federal employee is subject to criminal prosecution for every act that could conceivably fall within the definition of the "acts of corruption" in the Convention. In particular, there is no general "attempt" statute in U.S. federal criminal law, although federal statutes make "attempts" criminal in connection with specific crimes. The practical effect of this, however, is debatable. The "acts of corruption" described in Article VI (1) (a) and (b) are defined in such a way as effectively to embrace the acts constituting an attempt within the crime since it is the mere solicitation, acceptance, offering or granting of a bribe which is a crime, without any consummation of an act of bribery or even an agreement to bribe. The literal terms of subparagraph (c), on the other hand, would embrace a situation in which an individual took some preparatory action unknown to anyone, with the "purpose" of profiting illicitly at some future point. Under U.S. law, this would not be criminalized as such, although the conduct in question in a given case might well be prosecutable in the context of some other crime. It should also be noted, with respect to subparagraph (e), that the reference to "instigator" is not intended to require the United States to create a new crime of association denominated "instigation," but rather was included in the Convention merely as an illustrative form of the types of "participation" that the provision intends to cover. Although the U.S. legal system does not recognize the offense of "instigation" as such, it does contemplate equivalent but differently denominated offenses, such as aiding or abetting.

Despite the above, the existing network of laws in place in the United States can reasonably be deemed to satisfy the obligations imposed under the Convention with respect to the enactment of legislation. During the negotiations, the U.S. delegation provided considerable information to other delegations on the nature and content of U.S. law, and it was the understanding of all delegations that Article VII would not be understood to require new legislation in the U.S. substituting the broad wording of Article VI for specific U.S. laws currently in place.

In light of the foregoing, I recommend that the following understanding to Article VII be included in the United States instrument of ratification:

> Article VII of the Convention sets forth an obligation to adopt legislative measures to establish as criminal offenses the acts of corruption described in Article VI(1). There is an extensive network of laws already in place in the United States that criminalize a wide range of corrupt acts. Although United States laws may not in all cases be defined in terms or elements identical to those used in the Convention, it is the understanding of the United States,

> with the caveat set forth below, that the kinds of official corruption which are intended under the Convention to be criminalized would in fact be criminal offenses under U.S. law. Accordingly, the United States does not intend to enact new legislation to implement Article VII of the Convention.
>
> There is no general "attempt" statute in U.S. federal criminal law. Nevertheless, federal statutes make "attempts" criminal in connection with specific crimes. This is of particular relevance with respect to Article VI(1)(c), which by its literal terms would embrace a single preparatory act done with the requisite "purpose" of profiting illicitly at some future time, even though the course of conduct is neither pursued, nor in any sense consummated. The United States will not criminalize such conduct *per se*, although we would expect significant acts of corruption in this regard to be generally subject to prosecution in the context of one or more other crimes.

Article VIII ("Transnational Bribery") obligates the States Parties, subject to their Constitutions and the fundamental principles of their legal system, to prohibit and punish the offering or granting of a bribe, directly or indirectly, by its nationals, residents, and businesses domiciled there, to a government official of another State in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. This Article was included at the behest of the United States, and was intended to obligate the States Parties to have in place legislation similar to the U.S. Foreign Corrupt Practices Act (FCPA).

There are small differences, however, between the wording of Article VIII and that of the FCPA, and a literal reading of Article VIII could suggest that the U.S. would need to revise its laws in some respects to comply with the obligations imposed in the Article. For example, the FCPA specifically excepts from coverage "facilitating payments," *i.e.*, small gratuities sometimes paid to foreign government officials to secure or expedite performance of routine government action. See Title 15, United States Code, Sections 78dd–1(b) and 78dd–2(b). Article VIII, however, contains no such exception. Also, the FCPA applies only to payments made to obtain or retain business, while Article VIII requires criminalization of all payments made "in connection with any economic or commercial transaction," an arguably larger universe. Since Article VIII was included at the behest of the U.S. in order to require other OAS states to enact laws similar to the FCPA, none of the negotiating delegations expected that the U.S. itself would enact new legislation to comply with Article VIII.

In order to be clear on the scope of the U.S. commitment under Article VIII, I recommend that the following understanding be included in the United States instrument of ratification:

> With respect to Article VIII, the Government of the United States of America notes that current United States law provides criminal sanctions for transnational bribery. It is the understanding of the Government of the United

> States of America that no additional legislation is needed for the United States to comply with the obligation imposed in Article VIII.

Article IX ("Illicit Enrichment") is structurally analogous to Article VIII, and was included at the insistence of a number of the Latin American nations. The Article refers to the offense known as "illicit enrichment," which is defined as a significant increase in the assets of a government official that such official cannot reasonably explain in relation to his lawful earnings during the performance of his functions. Like Article VIII, compliance with the obligations imposed under this Article is subject to each State's Constitution and fundamental legal principles.

Although there is no offense of "illicit enrichment" as such in U.S. law, there are a number of laws and regulations in the United States that penalize the same substantive conduct which this article is intended to reach and which is proscribed by the "illicit enrichment" laws that exist in some nations. However, in an illicit enrichment statute of the sort contemplated by the statute, the defendant must bear the burden of establishing the legitimate origin of the assets in question. The Article therefore by its terms calls for States Parties to make the described conduct criminal without requiring an affirmative showing by the State of wrongdoing on the part of the defendant. Since under the U.S. legal system the State must in all cases affirmatively prove that an individual has engaged in wrongdoing before it can impose criminal sanctions on such person, compliance with the literal terms of Article IX would impose on the United States an obligation that would be inconsistent with its Constitution and the fundamental principles of its legal system.

Accordingly, the explicit exception contained in Article IX, which renders compliance with the obligation therein subject to each State's "Constitution and the fundamental principles of its legal system," is applicable to the United States.

This interpretation is consistent with that which was voiced by the U.S. delegation during the negotiations, and which was understood by the other delegations. The negotiators discussed Article IX in detail, and understood that the Article would not require the United States to enact new legislation. To emphasize this point, at the final session of negotiations, the head of the U.S. negotiating delegation read the following statement for the record:

> I stress that we remain perfectly happy to offer assistance and cooperation to those OAS states that have enacted illicit enrichment legislation. However, we do wish to reiterate . . . that we may be unable to adopt such legislation ourselves for constitutional reasons. In addition, we may be obliged to take a reservation to this article because our legislature may not wish to adopt such legislation for reasons unrelated to constitutional law or "fundamental principles," such as the fact that we deal with this issue fully through other laws already in force.

The other delegations accepted this statement, and no objections or dissenting views were voiced.

In order to leave no doubt about the scope of the U.S. commitment under Article IX, I recommend that the following understanding regarding Article IX be included in the United States instrument of ratification:

> Article IX obligates the States Parties, subject to the Constitution and fundamental legal principles of their respective legal systems, to establish as an offense the act of "illicit enrichment," as defined in the Article. With respect to this Article, the Government of the United States of America believes that the establishment of such an offense would be inconsistent with the United States Constitution and the fundamental principles of the United States legal system. The United States therefore understands that Article IX does not require the United States to establish a new criminal offense of illicit enrichment. However, the United States intends to provide assistance pursuant to the Convention in accordance with this Article, to the extent permitted by its domestic law.

Article X ("Notification") obligates those States Parties that adopt legislation regarding transnational bribery or illicit enrichment to notify the OAS Secretary General, who in turn shall notify the other States Parties. The Article further specifies that, for a State Party that makes such a notification, the crimes of transnational bribery and illicit enrichment shall be considered acts of corruption, for purposes of the Convention, thirty days following the date of notification.

Article XI ("Progressive Development") lists a number of acts the criminalization of which the States Parties "view as desirable and undertake to consider" so as to foster the development and harmonization of their domestic legislation and the attainment of the purposes of the Convention. Such acts include the improper use by a government official of classified or confidential information, or of property belonging to the State or to any firm or institution in which the State has a proprietary interest; any act or omission by any person who seeks to obtain a decision from a public authority to obtain illicitly a benefit or gain for herself or for another person; and the improper diversion to an independent agency or to an individual by a government official of any property, funds, or securities belonging to the State, that such official has received by virtue of his position for purposes of administration, custody, or for other reasons. The Article further states that, for those States Parties that have established these offenses, such offenses shall be considered acts of corruption for the purposes of the Convention. Any State Party that has not established these offenses shall, insofar as its laws permit, provide assistance and cooperation with respect to these offenses as provided in the Convention.

Article XII ("Effect on State Property") clarifies that it shall not be a requirement for application of the Convention that the acts of corruption harm State property.

Article XIII ("Extradition") sets forth standard provisions on extradition which are found in other multilateral treaties on law enforcement matters. The Article applies to the offenses established by the States Parties in accordance with the Convention. It states

that each of the offenses to which this Article applies shall be deemed to be included as extraditable offenses in any extradition treaty existing between or among the States Parties. Morever, the States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded in the future. The Article also provides that, if a State Party makes extradition conditional on the existence of a treaty, it may consider the Convention as a legal basis for extradition to a State with which it does not have an extradition treaty, with respect to any offense to which the Article applies. In addition, the Article establishes that States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which the Article applies as extraditable offenses between themselves.

Article XIII further provides that extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition. If extradition for an offense to which this Article applies is refused solely on the basis of the nationality of the person sought, the Parties are obligated to submit the case to their authorities for the purpose of prosecution, unless otherwise agreed with the Requesting State. Finally, this Article enables the Requested State, when the circumstances so warrant and are urgent, to take into custody a person whose extradition is sought or take other appropriate measures to ensure such person's presence at extradition proceedings.

Article XIV ("Assistance and Cooperation") contains obligations regarding mutual legal and technical assistance. It stipulates that, in accordance with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from law enforcement authorities of other States Parties, for the purpose of obtaining evidence and taking other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption. The Article further provides that the States Parties provide to each other the widest measures of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating, and punishing acts of corruption. This provision also requires the States Parties to foster exchanges of experiences by way of agreements and meetings between competent bodies and institutions, with special attention to methods and procedures of citizen participation in the fight against corruption.

Article XV ("Measures Regarding Property") stipulates that the States Parties are to provide to each other, in accordance with their domestic laws and applicable treaties or agreements, the broadest possible measure of assistance in the identification, tracing, freezing, seizure, and forfeiture of property or proceeds obtained, derived from, or used in, the commission of corruption offenses. The Article also directs each State Party that enforces its own or another State Party's forfeiture judgment to dispose of property or proceeds related to corruption offenses in accordance with its laws. Finally, the Article contains an asset-sharing clause, which provides that each State Party may, to the extent permissible under its laws, transfer all or part of forfeited property or proceeds to any

other State Party that assisted in the underlying investigation or proceedings.

Article XVI ("Bank Secrecy") provides that the Requested State shall not invoke bank secrecy as a basis for refusal to provide assistance sought under the Convention by the Requesting State. The Article states that the Requested State shall apply this Article in accordance with its domestic law, procedural provisions, or international agreements with the Requesting State. The Article also provides that the Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which the information was requested, unless authorized by the Requested State.

Article XVII ("Nature of the Act") provides that, for purposes of Articles XIII–XVI of the Convention, the fact that the property obtained or derived from an act of corruption was intended for political purposes, or that it is alleged that the act of corruption was committed for political motives or purposes, shall not suffice in and of itself for the act to qualify as a political offense or as a common offense related to a political offense.

Article XVIII ("Central Authorities") establishes that, for the purposes of international assistance and cooperation provided under the Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation under the Convention. Because in the United States there are numerous agencies that may have authority over a particular corruption matter, the U.S. negotiating team proposed that the designation of a central authority be rendered optional. It is expected that the U.S. agency designated as the central authority for our mutual legal assistance treaties (the Department of Justice) shall be the central authority in connection with requests for mutual legal assistance relating to corruption issues. Other types of requests will be handled by the appropriate agency in the U.S. with responsibility for that particular matter or type of request.

Article XIX ("Temporal Application") provides that, subject to the constitutional principles and domestic laws of each State, and to the existing treaties between the States Parties, the fact that the alleged act of corruption was committed before this Convention entered into force shall not preclude procedural cooperation in criminal matters between the States Parties. The Article clarifies that this provision shall not affect the principle of non-retroactivity in criminal law, nor shall application of this provision interrupt existing statutes of limitations relating to crimes committed prior to the date of entry into force of the Convention.

Article XX ("Other Agreements or Practices") states that no provision of the Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, bilateral or multilateral, that are currently in force or may be concluded in the future, or pursuant to any other applicable arrangement or practice.

Article XXI–XXVIII contain the final clauses. Article XXI ("Signature") provides that the Convention is open for signature by the

Member States of the OAS. Article XXII ("Ratification") states that the Convention is subject to ratification and that the instruments of ratification shall be deposited with the General Secretariat of the OAS. Article XXIII ("Accession") provides that the Convention shall remain open for accession by any other State, and that the instruments of accession shall be deposited with the General Secretariat of the OAS.

Article XXIV ("Reservations") stipulates that the States Parties may, at the time of adoption, signature, ratification, or accession, make reservations to the Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

Article XXV ("Entry into Force") provides that the Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. This Article also stipulates that, for each State ratifying or acceding to the Convention after the deposit of the such State of its instrument of ratification or accession.

Article XXVI ("Denunciation") states that the Convention shall remain in force indefinitely, but that any of the States Parties may denounce it. Any instrument of denunciation must be deposited with the General Secretariat of the OAS. The Convention shall cease to be in force for the denouncing State one year from the date of deposit of the instrument of denunciation.

Article XXVII ("Additional Protocols") stipulates that any State Party may submit for the consideration of other States Parties meeting at a General Assembly of the OAS additional draft protocols to the Convention to contribute to the attainment of the purposes of the Convention. The Article further provides that each such additional protocol shall establish the terms for its entry into force and shall apply only to those States that become Parties to it.

Finally, Article XXVIII (Deposit of Original Instrument") states that the original instrument of the Convention, the English, French, Spanish, and Portuguese texts of which are equally authentic, shall be deposited with the General Secretariat of the OAS, which shall forward an authenticated copy of its text to the United Nations Secretariat for registration and publication. This provision also states that the General Secretariat of the OAS shall be responsible for notifying its Member States and the States that have acceded to the Convention of signatures, of the deposit of instruments of ratification, accession, or denunciation, and of reservations, if any.

It is my belief that this Convention would afford substantial benefits to the United States, and would be consistent with existing United States legislation. The Departments of Justice and Commerce, the Office of Government Ethics, the U.S. Information Agency, and the Securities and Exchange Commission join the Department of State in recommending that the Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the understandings described above.

Respectfully submitted,

STROBE TALBOTT.

INTER-AMERICAN CONVENTION AGAINST CORRUPTION[2]

Preamble

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONVINCED that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples;

CONSIDERING that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance;

PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber;

RECOGNIZING that corruption is often a tool used by organized crime for the accomplishment of its purposes;

CONVINCED of the importance of making people in the countries of the region aware of this problem and its gravity, and of the need to strengthen participation by civil society in preventing and fighting corruption;

RECOGNIZING that, in some cases, corruption has international dimensions, which requires coordinated action by States to fight it effectively;

CONVINCED of the need for prompt adoption of an international instrument to promote and facilitate international cooperation in fighting corruption and, especially, in taking appropriate action against persons who commit acts of corruption in the

2. Signed in Caracas, Venezuela, on March 29, 1996.

performance of public functions, or acts specifically related to such performance, as well as appropriate measures with respect to the proceeds of such acts;

DEEPLY CONCERNED by the steadily increasing links between corruption and the proceeds generated by illicit narcotics trafficking which undermine and threaten legitimate commercial and financial activities, and society, at all levels;

BEARING IN MIND the responsibility of States to hold corrupt persons accountable in order to combat corruption and to cooperate with one another for their efforts in this area to be effective; and

DETERMINED to make every effort to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance,

HAVE AGREED

to adopt the following

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Article I
Definitions

For the purposes of this Convention:

"Public function" means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy.

"Public official", "government official", or "public servant" means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

Article II
Purposes

The purposes of this Convention are:

1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and

2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and

eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

Article III
Preventive Measures

For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.

2. Mechanisms to enforce these standards of conduct.

3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

4. Systems for disclosing the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public.

5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.

6. Government revenue collection and control systems that deter corruption.

7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.

8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.

9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.

10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.

11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.

12. The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article IV
Scope

This Convention is applicable provided that the alleged act of corruption has been committed or has effects in a State Party.

Article V
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.

4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VI
Acts of Corruption

1. This Convention is applicable to the following acts of corruption:

   a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

   b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

   c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;

d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any association or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein.

Article VII
Domestic Law

The States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the acts of corruption described in Article VI(1) and to facilitate cooperation among themselves pursuant to this Convention.

Article VIII
Transnational Bribery

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article IX
Illicit Enrichment

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article X
Notification

When a State Party adopts the legislation referred to in paragraph 1 of articles VIII and IX, it shall notify the Secretary General of the Organization of American States, who shall in turn notify the other States Parties. For the purposes of this Convention, the crimes of transnational bribery and illicit enrichment shall be considered acts of corruption for that State Party thirty days following the date of such notification.

Article XI
Progressive Development

1. In order to foster the development and harmonization of their domestic legislation and the attainment of the purposes of this Convention, the States Parties view

as desirable, and undertake to consider, establishing as offenses under their laws the following acts:

a. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;

b. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;

c. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain, whether or not such act or omission harms State property; and

d. The diversion by a government official, for purposes unrelated to those for which they were intended, for his own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his position for purposes of administration, custody or for other reasons.

2. Among those States Parties that have established these offenses, such offenses shall be considered acts of corruption for the purposes of this Convention.

3. Any State Party that has not established these offenses shall, insofar as its laws permit, provide assistance and cooperation with respect to these offenses as provided in this Convention.

Article XII
Effect on State Property

For application of this Convention, it shall not be necessary that the acts of corruption described therein harm State property.

Article XIII
Extradition

1. This article shall apply to the offenses established by the States Parties in accordance with this Convention.

2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty in force between the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.

6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

7. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings.

Article XIV

Assistance and Cooperation

1. In accordance with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute the acts of corruption described in this Convention, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption.

2. The States Parties shall also provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. To that end, they shall foster exchanges of experiences by way of agreements and meetings between competent bodies and institutions, and shall pay special attention to methods and procedures of citizen participation in the fight against corruption.

Article XV
Measures Regarding Property

1. In accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, the States Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offenses established in accordance with this Convention.

2. A State Party that enforces its own or another State Party's forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the property or proceeds in accordance with its laws. To the extent permitted by a State Party's laws and upon such terms as it deems appropriate, it may transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.

Article XVI
Bank Secrecy

1. The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State.

2. The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.

ARTICLE XVII
Nature of the Act

For the purposes of articles XIII, XIV, XV and XVI of this Convention, the fact that the property obtained or derived from an act of corruption was intended for political purposes, or that it is alleged that an act of corruption was committed for political

motives or purposes, shall not suffice in and of itself to qualify the act as a political offense or as a common offense related to a political offense.

Article XVIII
Central Authorities

1. For the purposes of international assistance and cooperation provided under this Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements.

2. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.

3. The central authorities shall communicate with each other directly for the purposes of this Convention.

Article XIX
Temporal Application

Subject to the constitutional principles and the domestic laws of each State and existing treaties between the States Parties, the fact that the alleged act of corruption was committed before this Convention entered into force shall not preclude procedural cooperation in criminal matters between the States Parties. This provision shall in no case affect the principle of non-retroactivity in criminal law, nor shall application of this provision interrupt existing statutes of limitations relating to crimes committed prior to the date of the entry into force of this Convention.

Article XX
Other Agreements or Practices

No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.

Article XXI
Signature

This Convention is open for signature by the Member States of the Organization of American States.

Article XXII
Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article XXIII
Accession

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article XXIV
Reservations

The States Parties may, at the time of adoption, signature, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

Article XXV
Entry Into Force

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall

enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article XXVI
Denunciation

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. One year from the date of deposit of the instrument of denunciation, the Convention shall cease to be in force for the denouncing State, but shall remain in force for the other States Parties.

Article XXVII
Additional Protocols

Any State Party may submit for the consideration of other States Parties meeting at a General Assembly of the Organization of American States draft additional protocols to this Convention to contribute to the attainment of the purposes set forth in Article II thereof.

Each additional protocol shall establish the terms for its entry into force and shall apply only to those States that become Parties to it.

Article XXVIII
Deposit of Original Instrument

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify its Member States and the States that have acceded to the Convention of signatures, of the deposit of instruments of ratification, accession, or denunciation, and of reservations, if any.