



# Conference of the States Parties to the United Nations Convention against Corruption

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## Open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption Second meeting

Panama City, 25 and 26 November 2013

### Report of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Panama City on 25 and 26 November 2013

#### I. Introduction

1. In resolution 4/2, entitled “Convening of open-ended intergovernmental expert meetings to enhance international cooperation”, adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its fourth session, held in Marrakech, Morocco, from 24 to 28 October 2011, the Conference decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance and to convene one such meeting during its fifth session and, prior to that, within existing resources, at least one intersessional meeting.
2. In the same resolution, the Conference also decided that the expert meetings should perform the following functions: (a) assist the Conference in developing cumulative knowledge in the area of international cooperation; (b) assist it in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives and contribute to the implementation of the related provisions of the United Nations Convention against Corruption under the guidance of the Conference; (c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order to strengthen capacities at the national level; (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition; and (e) assist the Conference in identifying the capacity-building needs of States.



3. Pursuant to resolution 4/2, the first open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption was held in Vienna on 22 and 23 October 2012.

## **II. Organization of the meeting**

### **A. Opening of the meeting**

4. The experts on enhancing international cooperation under the United Nations Convention against Corruption held their second meeting in Panama City on 25 and 26 November 2013, during the fifth session of the Conference of the States Parties to the United Nations Convention against Corruption.

5. The secretariat recalled Conference resolution 4/2 and the mandate of the meeting of experts. Reference was made to some of the conclusions of the first meeting regarding, inter alia, the lack of comprehensive information provided by States parties on the practical implementation of chapter IV, including statistical information, as part of the Review Mechanism, which had been regarded as an important addition to the information on legislative provisions. The secretariat also presented the follow-up action undertaken to implement the mandate of the first meeting to solicit and gather views and suggestions from Member States regarding the future work of the expert meeting. In that regard, reference was made to a list of possible options for consideration, based on the information and feedback provided by Member States.

6. The Chair delineated the framework for discussion and provided explanations regarding the elaboration of the provisional agenda and organization of work.

### **B. Adoption of the agenda and organization of work**

7. On 25 November 2013, the meeting of experts to enhance international cooperation under the United Nations Convention against Corruption adopted the following agenda:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Modalities of international cooperation under chapter IV of the United Nations Convention against Corruption.
4. Technical assistance for capacity-building: priorities and needs.
5. Future action to enhance international cooperation under the United Nations Convention against Corruption.
6. Conclusions and recommendations.
7. Adoption of the report.

### C. Attendance

8. The following States parties to the Convention were represented at the meeting: Algeria, Angola, Argentina, Australia, Bahrain, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Ecuador, Egypt, El Salvador, Finland, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Kazakhstan, Kenya, Kuwait, Lebanon, Lesotho, Lithuania, Madagascar, Malaysia, Maldives, Mexico, Nauru, Nepal, Nicaragua, Niger, Pakistan, Panama, Paraguay, Philippines, Portugal, Romania, Russian Federation, Saudi Arabia, Singapore, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Viet Nam and Zimbabwe.

9. The following States signatories to the Convention were represented by observers: Czech Republic, Germany and Japan.

### III. Modalities of international cooperation under chapter IV of the United Nations Convention against Corruption

10. A representative of the secretariat introduced the most important findings and conclusions on the implementation of chapter IV arising from the completed reviews of the ongoing first review cycle of the Mechanism for the Review of Implementation of the Convention, as contained in the thematic reports prepared by the secretariat entitled “Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 44 and 45)” (CAC/COSP/2013/9) and “Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 46-50)” (CAC/COSP/2013/10), as well as the report prepared by the secretariat entitled “Regional implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (CAC/COSP/2013/12).

11. The debate on this agenda item was facilitated by a panel discussion on practical issues and challenges encountered in the field of international cooperation to combat corruption. Experts from Colombia, the Philippines, the Russian Federation, the United Republic of Tanzania and the United States participated in the panel discussion.

12. The panellist from the United States referred to the crucial role of central authorities in ensuring timely responses to requests for assistance and the efficiency of international cooperation mechanisms. Such authorities needed to be staffed by well-trained personnel with access to information and contacts and the necessary confidence in the operation of the law enforcement and criminal justice system of the foreign State. The panellist referred to the infrequent invocation of the Convention in both extradition and mutual legal assistance cases. He attributed that to policy decisions according priority to applicable bilateral treaties or agreements, as well as to the fact that practitioners had an inclination to use as the legal basis in such cases the legal framework they already knew. Reference was also made to the impact of formalistic approaches and requests of a *de minimis* nature on the workload of practitioners and the identification of priorities in providing assistance. The panellist stressed as a good practice the posting of attachés and liaison officers

abroad for effective and expeditious cooperation. He further underlined the importance of the provision of the Convention prohibiting the use of bank secrecy as a ground for refusal of mutual legal assistance requests.

13. The panellist from the United Republic of Tanzania provided an overview of the system in place in that country enabling international cooperation. He stressed that informal networks improved the quality of international cooperation by providing channels for the swift exchange of intelligence and evidence, enhancing coordination and eliminating barriers to international cooperation. Good examples of international cooperation were to be found in cases where States pursued common interests. In some asset recovery cases, where the States concerned had clearly defined mutually beneficial interests and cooperated on a basis of confidence and trust, settlements under criminal law could lead to swift asset returns. Among the challenges to international cooperation, he mentioned the lack of technical expertise that still persisted in many areas.

14. The panellist from the Philippines referred to the domestic legal framework on extradition and mutual legal assistance in her country and its application in practice. In that regard, she identified as the main implementation challenges the following deficiencies: the existence of loopholes in domestic laws, for example, the fact that the grounds for refusal were stipulated only in the applicable treaties; the lack of uniform rules of procedure governing extradition proceedings; and insufficient knowledge on the part of the law enforcement and prosecutorial authorities of the use of treaties on extradition and mutual legal assistance and the good practices arising therefrom. The panellist mentioned the following as being the best ways to address the aforementioned challenges: the enactment of a more comprehensive law on extradition and a stand-alone law on mutual legal assistance; the enhancement of coordination among agencies involved in related matters; and the promotion of multidisciplinary training on international cooperation in criminal matters.

15. The panellist from the Russian Federation stressed that the Convention was the first global instrument against corruption and that it provided a detailed framework for international cooperation. He highlighted the importance of informal cooperation, which could facilitate the submission of formal mutual legal assistance requests. Based on articles 1 and 48 of the Convention, such cooperation could be carried out whenever it was consistent with the respective domestic legal and administrative systems, therefore also before a criminal process was initiated. The speaker noted a successful practice of using the Convention for sharing information not only in a criminal, but also in an administrative context. He also provided an example in which the sharing of information on migration had contributed to the prevention of a specific corruption offence. He also encouraged States parties to amend their legislation with a view to allowing for such informal cooperation.

16. The panellist from Colombia provided information on cases where his country had successfully cooperated with a number of other States, including a case involving the use of videoconferencing for testimony purposes. He also referred to the difficulties encountered in practice in sharing cross-border evidence. He encouraged States parties to streamline their legislation and treaties in order to ensure that evidence received as a result of mutual legal assistance could be used for the purposes of domestic criminal proceedings in the requesting State. States parties needed to accord priority to removing barriers to international cooperation, and to fully implementing chapter IV of the Convention.

17. Following the panel discussion, speakers emphasized the need for streamlined efforts to foster mutual trust as a prerequisite for efficient international cooperation. One speaker stressed the significance of empowering central authorities to cooperate with the investigative agencies of the foreign State, especially when seeking additional information for the submission of formal mutual legal assistance requests.

18. In general, speakers agreed that enhanced international cooperation could be achieved through direct communication and close coordination between the competent authorities, especially those of countries sharing the same legal principles. Moreover, speakers recognized that, in addition to the channels of communication and cooperation among practitioners and authorities of different countries, it would be essential to improve domestic inter-agency coordination in a country receiving a request, so as to ensure its timely and expeditious execution.

19. The effectiveness of informal networks was highlighted as a sine qua non condition for robust mechanisms of international cooperation. In that regard, one speaker made reference to a subregional network for informal cooperation among neighbouring countries, established and run with the support of the United Nations Office on Drugs and Crime (UNODC). He also highlighted the efficiency of informal information exchange between the focal points in the countries involved. In that context, it was possible to work on a large number of files in a short period. The speaker encouraged other countries to establish similar informal cooperation networks.

20. One speaker referred to the difficulties posed in the field of international cooperation by existing discrepancies in the laws and practices of States parties belonging to different legal systems and traditions. He proposed the development of a “model request formula” for both extradition and mutual legal assistance requests, with a view to harmonizing procedural requirements and minimizing, to the extent possible, instances of denial of assistance owing to the differing procedures recognized and established under the laws of the requesting and requested States.

#### **IV. Technical assistance for capacity-building: priorities and needs**

21. A representative of the secretariat gave an overview of challenges in the implementation of chapter IV of the Convention, and related technical assistance needs identified through the country review reports, as presented in documents CAC/COSP/2013/5, CAC/COSP/2013/9 and CAC/COSP/2013/10. The most frequently requested type of technical assistance was a summary of good practices and lessons learned, followed by legislative assistance, capacity-building and technological assistance. Some States also requested assistance in the collection of statistical data and for assessments of the efficiency of their international cooperation networks.

22. In the ensuing discussion, speakers referred to the challenges encountered in international cooperation. They highlighted that efficient international cooperation includes not just improving national legislation, but also ensuring that requesting and requested countries collaborate directly and effectively to promote the widest measure of assistance. Some speakers made reference to mutual legal assistance

with respect to proceedings in relation to the offences for which a legal person may be held liable, in accordance with article 26 and article 46, paragraph 2, of the Convention. While the experts considered mutual legal assistance in criminal matters as paramount, they also acknowledged that not all countries had established the criminal responsibility of legal persons. They noted the propriety of assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

23. Speakers referred to existing tools developed by UNODC to support the development of legislation, as well as to ongoing technical assistance activities. It was acknowledged that the availability of technical assistance was a prerequisite for many countries in order to ensure effective international cooperation. Speakers noted that the needs for technical assistance for the implementation of the Convention identified through the country reviews often required further refining during the follow-up process. In that process, detailed and prioritized proposals for technical assistance could be developed and links to other areas of technical assistance programming for the support of criminal justice systems could be established. One speaker informed the meeting about a planned regional seminar on international cooperation for the prevention of transnational bribery.

24. One speaker suggested that the secretariat prepare a comparative study of technical assistance provided by the Security Council Committee established pursuant to resolution 1373 (2001) (the Counter-Terrorism Committee) and technical assistance provided in the fight against corruption.

## **V. Future action to enhance international cooperation under the United Nations Convention against Corruption**

25. Speakers exchanged views on the future course of action of the meeting of experts, taking into account the list of possible options contained in the progress report on implementing the mandates of the expert group on international cooperation (CAC/COSP/EG.1/2013/2, para. 77).

26. One speaker emphasized the importance of the expert meeting discussing how to ensure effective international cooperation in the prevention of corruption.

27. A number of speakers favoured the organization, at least on a provisional basis, of joint meetings of the meeting of experts to enhance international cooperation under the United Nations Convention against Corruption and the Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in view of the existence of similar discussion topics in both groups. The same speakers argued that that option could be further pursued on the understanding that experts participating in such joint meetings would have experience relating to the international cooperation provisions of both Conventions and that, from a logistical point of view, resources could be better used and conserved.

28. Several speakers argued in favour of retaining the separate organizational and substantive frameworks of the two groups and of maintaining both of them on an independent basis, stating that there were also specific aspects of international cooperation on which the two conventions differed and provided for distinct

measures and requirements. Speakers referred to the differences between the two Conventions in terms of their States parties and representation and the different scope and nature of the two instruments, and mentioned the possible financial implications of merging the two groups. In that context, the continuation of the practice of holding back-to-back meetings of the two groups, as established in 2012, was proposed by some speakers.

29. Another proposal supported by some speakers was a combination of the two above-mentioned approaches, favouring a distinction between topics dealt with similarly in the two Conventions, on the one hand, and topics on which the two Conventions adopted different approaches, on the other. On the basis of that categorization, both joint and separate meetings could be pursued with carefully designed agendas that took into account the areas of convergence and deviation.

30. Other speakers highlighted the interrelationship between mutual legal assistance and asset recovery issues and therefore suggested as a possible option linking the work of the United Nations Convention against Corruption expert meetings to the work of the Open-ended Intergovernmental Working Group on Asset Recovery.

31. Irrespective of the context of future expert meetings, one speaker emphasized that the agenda of the United Nations Convention against Corruption expert meetings should be conducive to discussions among expert practitioners and officials from central authorities to exchange views on practical problems and advance towards concrete solutions to international cooperation challenges.

## **VI. Conclusions and recommendations**

32. Member States should ensure the effectiveness of designated central authorities for mutual legal assistance and maintain direct channels of communication between them in order to ensure responses to requests without undue delay and to enhance domestic inter-agency coordination.

33. Member States should ensure that appropriate resources are allocated to authorities or agencies involved in international cooperation. In that connection, support should be provided to developing countries and countries with economies in transition with a view to strengthening their domestic capacity in this field.

34. States parties should take measures to raise awareness among practitioners about the added value of chapter IV of the Convention, including promoting the use of the Convention for international cooperation.

35. States parties should consider, where necessary, adopting measures to allow for the sharing of information even before a formal criminal case is opened or a request for mutual legal assistance is submitted, in accordance with articles 46, 48 and 56 of the Convention.

36. States parties should continue to consider assisting each other, where appropriate and consistent with their domestic legal system, in investigations of and proceedings in civil and administrative matters relating to corruption, in accordance with article 43, paragraph 1, of the Convention.

37. States parties should give consideration to the effective use of existing informal cooperation initiatives, as well as the establishment of additional ones for the purposes of international cooperation in fighting corruption.

38. States parties should collaborate with each other so that evidence can be provided in a form that is useful to the requesting State, and should assist each other in the identification of any impediments, including in their legislation and treaties.

39. The secretariat should continue its work of developing tools that would further facilitate international cooperation, in particular between countries of different legal systems, and, *inter alia*, explore the possibility of preparing model request templates for different scenarios of international cooperation. Such templates should take into account existing tools and be based upon different legal systems, which could help to reduce procedural barriers to cooperation.

40. Providers of technical assistance are encouraged to take into account the technical assistance needs identified by the review of implementation when developing technical assistance programmes.

41. In order to ensure the efficient use of resources on a provisional basis and without prejudice to their independent status and mandates, States parties invite both conference bodies to consider that the expert group meetings on international cooperation under the United Nations Convention against Corruption and the meetings of the corresponding Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime could be held, when useful and feasible, back-to-back at the same venue.

## **VII. Adoption of the report**

42. On 27 November 2013, the meeting of experts adopted the report on its second meeting.