



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

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### Consideration of the issue of bribery of officials of public international organizations

## Implementation of resolution 2/5 of the Conference of the States Parties to the United Nations Convention against Corruption

### Note by the Secretariat

#### I. Introduction

1. In its resolution 58/4, in which the General Assembly adopted the United Nations Convention against Corruption, it requested the Conference of the States Parties to the United Nations Convention against Corruption to consider the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, jurisdiction and the role of international organizations.

2. In its resolution 1/7, entitled "Consideration of bribery of officials of public international organizations", the Conference requested the Secretariat to organize an open-ended dialogue among international organizations and interested States parties on the issues of criminalization of bribery of officials of public international organizations, privileges and immunities, jurisdiction and the role of international organizations, and to report to the Conference at its second session. The Conference also encouraged States parties, when appropriate and consistent with their principles of jurisdiction, to criminalize the offences set forth in article 16 of the Convention. Furthermore, States parties expressed their commitment, in their capacity as States members of public international organizations, to use their influence in the organizations in which they participated to have those organizations align their financial and other public integrity rules to the principles of the Convention.

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\* CAC/COSP/2009/1.



3. The United Nations Office on Drugs and Crime (UNODC) approached the implementation of Conference resolution 1/7 in two ways. First, on 12 March 2007, the Secretariat officially approached States parties to the Convention and international organizations, seeking their views on the issues addressed in the resolution and enquiring about their interest in participating in an open-ended dialogue. A total of 32 countries and 18 international organizations replied initially, expressing interest and encouraging the implementation of resolution 1/7. A meeting was convened in Vienna on 27 September 2007, attended by States and organizations, to continue the mandated open-ended dialogue, focusing on issues of criminalization, privileges and immunities, jurisdiction and the role of international organizations. Expert consultations were further held during the second session of the Conference. States parties expressed their interest in focusing further discussions on the issue of cooperation between public international organizations and States parties, with a view to exchanging experiences and identifying lessons learned.

4. Separate from but in parallel to this, in April 2007 UNODC presented a proposal to the members of the United Nations System Chief Executives Board for Coordination (CEB) to undertake a system-wide institutional integrity initiative to extend the principles and standards of the Convention to the organizations of the United Nations system. The Board endorsed the recommendation of the High-level Committee on Programmes that the High-level Committee on Management and its relevant networks should be actively engaged in pursuing the matter with UNODC. Members of the Board were requested to appoint two representatives each to undertake a review of internal regulations and rules against the standards of the Convention. An overview of the relevant principles of the Convention was provided to guide the organizations in this process, along with a suggested timetable for action. On 28 September 2007, a meeting was organized in Vienna with designated representatives of members of CEB to share and compare results on the initial work undertaken in pursuance of this voluntary consultative process. Further, a round-table discussion on bribery of officials of public international organizations was held during the second session of the Conference of the States Parties on 31 January 2008, with representatives of 10 international organizations and 3 interested Member States, in which participants reiterated their support for the initiative and their commitment to the consultative process and provided further information on their internal regulations and rules. At the request of the participating CEB members, UNODC also committed itself to creating a web page that would provide an open and transparent platform for collating both responses to the UNODC checklist and other relevant materials related to the work of aligning internal rules and regulations with the standards of the Convention.

5. In its resolution 2/5, entitled "Consideration of the issue of bribery of officials of public international organizations", the Conference of the States Parties:

(a) Encouraged States parties that had not already done so to criminalize, when appropriate and consistent with their principles of jurisdiction, the offences set forth in article 16 of the United Nations Convention against Corruption;

(b) Invited the Secretariat to continue the dialogue initiated with relevant public international organizations in order to gather concrete information concerning the manner in which they ensure prevention of corruption and manage corruption cases that may involve their staff or agents, and to present to the

Conference at its third session a report on the efforts undertaken to align the financial and other public integrity rules of public international organizations with the principles set forth in the Convention;

(c) Recommended that an open-ended workshop be held, with the participation of practitioners and experts, including representatives of the Office of Internal Oversight Services and the Office of Legal Affairs of the Secretariat and the oversight offices of other international organizations, as well as members of the judiciary and law enforcement officers who have had to deal with corruption cases involving officials of public international organizations. The main purpose of the workshop would be to exchange best practices and to address the technical issues highlighted in the note by the Secretariat on the implementation of Conference resolution 1/7 (CAC/COSP/2008/7), in particular cooperation between public international organizations and States parties, and exchange of information on ongoing investigations and jurisdiction. The outcome of the workshop would possibly lead to, *inter alia*, the setting up of a network capable of allowing further exchanges between participants;

(d) Requested the Secretariat to facilitate, in consultation with Member States and subject to the availability of extrabudgetary resources, the organization of the workshop;

(e) Requested the Secretariat to coordinate its work as relevant with the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, established by the General Assembly in its resolution 61/29.

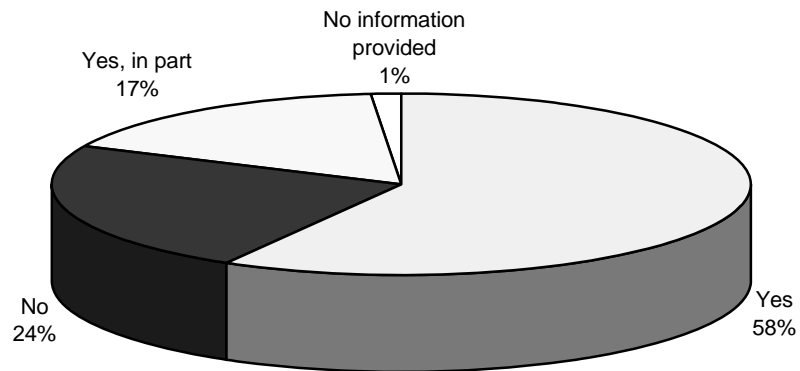
6. The present background paper is intended to assist the Conference in its deliberations on the issue of bribery of officials of public international organizations. It provides the Conference with an update on ongoing activities, in particular on the status of implementation of article 16, paragraph 2, the efforts undertaken for the alignment of the integrity rules of public international organizations and the workshop of practitioners held in accordance with resolution 2/5.

## **II. Criminalization of offences under article 16**

7. The Conference of the States Parties, in its resolution 2/5, encouraged States parties that had not already done so to criminalize, when appropriate and consistent with their principles of jurisdiction, the offences set forth in article 16 of the United Nations Convention against Corruption.

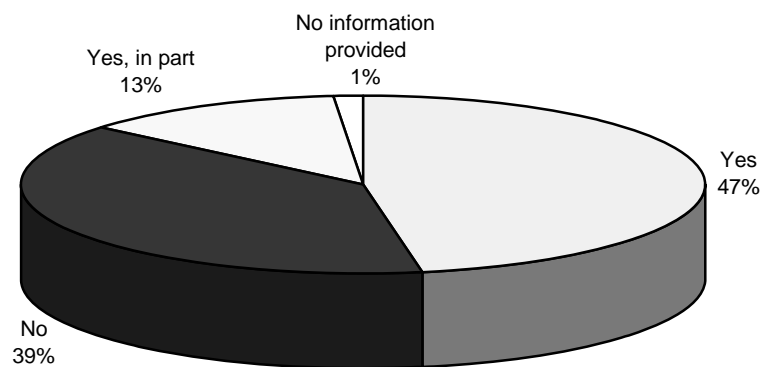
8. As at 15 July 2009, 72 States parties to the Convention had submitted their self-assessments on the implementation of the Convention. With regard to the mandatory provision of article 16, paragraph 1, of the Convention – concerning active bribery of foreign public officials and officials of public international organizations – the majority of States parties (58 per cent) reported full implementation. However, nearly one quarter (24 per cent) indicated that they had not implemented this mandatory provision, while 17 per cent reported partial implementation and 1 per cent did not provide any information in this regard (see figure I).

Figure I  
Global implementation of paragraph 1 of article 16 by reporting States parties



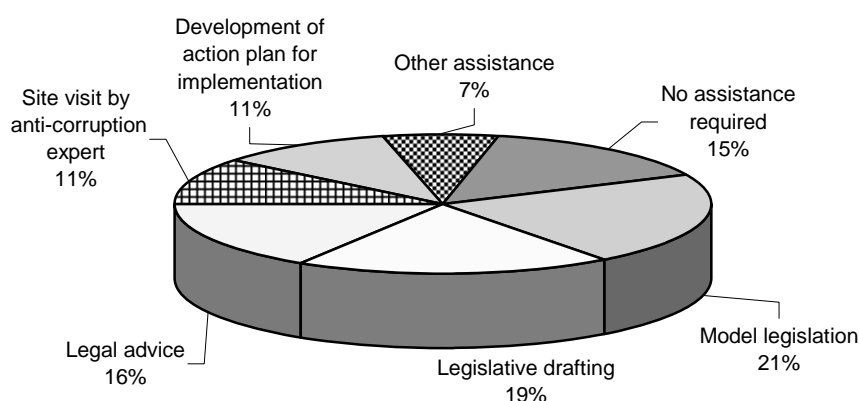
9. Even though article 16, paragraph 2, of the Convention – concerning passive bribery of foreign public officials and officials of public international organizations – is not a mandatory provision, nearly half of the reporting States parties (47 per cent) indicated that they had fully implemented it, while 13 per cent reported partial implementation, 39 per cent reported no implementation and 1 per cent did not provide any information (see figure II).

Figure II  
Global implementation of paragraph 2 of article 16 by reporting States parties



10. These responses provide an initial overview of the global implementation of article 16 and allow the identification of some initial tendencies. One observation that can be made is that challenges to implementation exist with regard to both paragraphs of article 16. Of the 72 reporting States parties, 85 per cent of those that reported partial or no implementation of article 16 indicated the need for technical assistance. The forms of technical assistance most frequently requested were model legislation (21 per cent) and assistance in legislative drafting (19 per cent) (see figure III).

Figure III  
**Global technical assistance needs of the 38 parties that reported partial or no implementation of article 16**



### III. Efforts undertaken for the alignment of the integrity rules of public international organizations

11. In its resolution 2/5, the Conference of the States Parties invited the Secretariat to continue the dialogue initiated with relevant public international organizations in order to gather concrete information concerning the manner in which they ensured prevention of corruption and managed corruption cases that may involve their agents, and to present to the Conference at its third session a report on the efforts undertaken to align the financial and other public integrity rules of public international organizations with the principles set forth in the Convention.

12. Most relevant to this task was that the Secretariat continued to serve as a focal point for the CEB institutional integrity initiative.<sup>1</sup> The second meeting on the institutional integrity initiative was conducted in Vienna on 28 January 2009, to assess the results of the consultative process to review internal rules and regulations of international organizations with a view to alignment with the principles of the Convention.

13. The following members of CEB were present at the meeting: Office of Legal Affairs of the Secretariat, United Nations Development Programme (UNDP), World

<sup>1</sup> The Secretariat also raised prevention and case management issues in informal consultations held at the Tenth Conference of International Investigators, hosted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Jordan from 10 to 12 June 2009 and at the tenth meeting of the International Group for Anti-Corruption Coordination, hosted by the Secretariat in Vienna on 22 and 23 October 2008.

Food Programme (WFP), Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), International Telecommunication Union (ITU), United Nations Educational, Scientific and Cultural Organization (UNESCO), Office of the United Nations High Commissioner for Refugees (UNHCR), UNODC, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), World Intellectual Property Organization (WIPO) and World Trade Organization (WTO).

14. The following other international organizations also participated as observers: Asian-African Legal Consultative Organization, Eurojust, International Development Law Organization, Organization for Economic Cooperation and Development (OECD) and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

15. The meeting was also attended by observers of several Member States, at their request.

16. The Secretariat provided a detailed update on the progress of the initiative and noted that as at 30 June 2009, 18 of the 28 CEB members had submitted their written responses to the request to undertake a review of internal rules and regulations against the standards of the Convention, using the overview of the relevant principles of the Convention prepared by UNODC. Of these, 17 provided a substantial response and one, the International Monetary Fund, declined to engage in the review process.

17. Pursuant to the commitment undertaken during the round-table discussion held at the second session of the Conference of the States Parties (31 January 2008), the Secretariat had created an institutional integrity initiative web page that was hosted on the United Nations integrity awareness web portal. The web page included the contributions received by the 17 CEB members mentioned above, except for two United Nations bodies, the International Labour Organization and the Office of Legal Affairs of the Secretariat, which declined to authorize the posting of their responses. It also provided additional materials, including relevant documents from the ad hoc working group of the United Nations legal advisers on fraud and corruption, the Office of the United Nations Ombudsman and the United Nations Ethics Office, as well as material received from CEB members in response to an earlier invitation to comment on their positions regarding Conference resolution 1/5.

18. CEB members urged those members that had not yet done so to complete their review of internal regulations and rules against the standards of the Convention and to submit it to the Secretariat in the checklist format prepared by UNODC. Several CEB members also noted that the responses to the UNODC checklist were only the first step in the institutional review process and that the lack of full response delayed progress in the initiative as a whole. In particular, it was noted that preliminary discussions on the proposed adoption of an integrity protocol among CEB members remained elusive because of the lack of engagement of all CEB members.

19. States parties also supported the initiative and highlighted that it was timely and necessary, in particular for Member States to better understand the rules of and interact with international organizations. Many speakers stressed that Member States should continue to use their voices and votes in the international

organizations in which they participate to ensure that those organizations embrace the principles enshrined in the Convention.

#### **IV. Workshop on best practices on cooperation between public international organizations and States parties**

20. An open-ended workshop of practitioners and experts on international cooperation between public international organizations and States parties was held on 28 and 29 January 2009, facilitated by UNODC, to discuss experiences and identify good practices for cooperation between public international organizations and States parties in the investigation of cases involving the bribery of officials of public international organizations.

21. The following States parties were represented at the workshop: Algeria, Angola, Argentina, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Bulgaria, Burundi, Canada, Costa Rica, Croatia, Egypt, El Salvador, Fiji, France, Germany, Greece, Guatemala, Indonesia, Iraq, Jordan, Kuwait, Malaysia, Morocco, Norway, Peru, Philippines, Poland, Qatar, Romania, Sweden, Turkey, United Arab Emirates, United States of America and Zambia.

22. The European Community, a regional economic integration organization that is a party to the Convention, was also represented at the workshop.

23. The following signatories participated: Czech Republic, Haiti, Iran (Islamic Republic of), Japan, Sudan, Syrian Arab Republic, and Venezuela (Bolivarian Republic of).

24. The following observer State was represented: Oman.

25. The following Secretariat units and organizations of the United Nations system were represented: Office of Legal Affairs, Office of Internal Oversight Services (OIOS), United Nations Interim Administration Mission in Kosovo (UNMIK), UNDP, WFP, FAO, ILO, ITU, UNESCO, UNHCR, UNRWA and WIPO.

26. The following intergovernmental organizations were represented: Asian-African Legal Consultative Organization, Eurojust, International Development Law Organization, OECD and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

27. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

28. The following international organizations were represented: World Trade Organization and Council of Geopolitics.

29. The Secretary of the Conference of the States Parties opened the workshop. A representative of the Secretariat recalled the expert consultations held on 27 September 2007 and at the second session of the Conference of the States Parties, in which States parties had expressed their interest in focusing further discussions on the issue of cooperation between public international organizations and States parties, with a view to exchanging experiences and identifying lessons learned.



## A. Presentations on good practices in international cooperation

30. A former International Prosecutor at the State Court of Bosnia and Herzegovina summarized the experience of that country and its cooperation with the International Tribunal for the Former Yugoslavia and the North Atlantic Treaty Organization. According to that experience, it was considered a good practice for international organizations to adopt a written policy on cooperation with national authorities and other international organizations, in particular with regard to the sharing of evidence, and to designate a contact point for such cooperation. For States it was considered a good practice to adopt legislation expressly authorizing the use of information provided by international organizations as evidence in courts, and to update procedures for mutual legal assistance accordingly. Further, it was considered a good practice for States to designate a contact point for international cooperation with international organizations.

31. The representative of OIOS in Vienna summarized the role of its Investigations Division in investigating reports of violations of United Nations regulations, rules and administrative issuances and providing appropriate recommendations on jurisdictional and disciplinary action. The representative highlighted the overlap of some OIOS investigations with criminal investigations, but stressed also the significant differences that existed between such investigations. In OIOS proceedings, staff are obliged to cooperate with the investigation and cannot invoke all rights of the accused in a criminal law process; in any case, due process rights have to be respected (General Assembly resolution 63/119). OIOS does not have the power to arrest or detain, but investigators have full access to staff and assets of the United Nations. The speaker stressed that under section 21 of the Convention on the Privileges and Immunities of the United Nations, OIOS has the mandate to assist Member States in national prosecutions. Among the challenges that OIOS experienced in its work, the representative mentioned bribery of local officials and bribery and fraud in procurement and employment. Lessons learned included the benefit of designating a national investigations officer to work alongside OIOS in cases involving investigations of military peacekeepers; the benefit of having an explicit investigation protocol or strategy; and the need to note the differences between an internal administrative proceeding by OIOS involving staff under United Nations disciplinary jurisdiction, on the one hand, and a criminal investigation on the other.

32. The representative of UNMIK briefed participants on the experience gained from cooperation in corruption cases in Kosovo, where international UNMIK staff investigated cases of corruption involving national officials. The representative noted that information in the investigation of corruption cases was particularly difficult to collect and highlighted the importance of concluding criminal proceedings in timely fashion, including the confiscation of proceeds of corruption. It was stressed that OIOS should play a decisive role in the investigation of corruption cases in peacekeeping missions and should cooperate closely with and refer cases to the national authorities. The representative further highlighted the importance of mutual cooperation and exchange of information.

## **B. Discussion on experiences and good practices on international cooperation**

33. Many speakers supported the workshop and expressed the hope that the open-ended dialogue would continue.

34. Speakers highlighted that implementation of the entire article 16 was the basis for international cooperation in criminal cases concerning bribery of officials of public international organizations.

35. International organizations were encouraged to move ahead in the alignment of their internal regulations, rules and policies, in particular with regard to the sharing of information with local authorities and evidentiary requirements. They were further encouraged to share their rules and policies with States. One speaker suggested that the policies of all international organizations should include (a) the recognition of the organization's obligation to facilitate the proper administration of justice and therefore to notify the competent national authorities of credible allegations of corruption as early as possible, (b) a uniform and principled approach to notification and cooperation and (c) a recognition that in a certain case more than one State may be competent to exercise jurisdiction over the alleged offence, and that there may be limits on the capacity of any one such State to respond effectively.

36. Many speakers stressed the essential importance of information-sharing and encouraged States and international organizations to share information at the early stages of a case, even if such information did not constitute evidence and even if a referral or waiver of immunity was not yet under discussion. It was stressed that delays had a negative impact and led to loss of evidence in investigations both by States and by international organizations. International Organizations were encouraged to develop criteria regarding information that they would share at the different stages of a process. The extent to which staff members should be informed when information and evidence were shared, in order to strike a balance between efficiency in investigations and respect for the rights of staff members, was discussed. Some speakers stressed the importance of research and data collection and exchange, including in regard to specific situations, such as offences committed in the provision and/or delivery of emergency aid.

37. Although information shared by international organizations was considered very useful in investigations, the presentation of this information as evidence before national courts was often considered challenging. National legislation should contain rules on the treatment and admissibility of this evidence, and cooperation in the collection of evidence should be enhanced to achieve that goal. One speaker suggested that the first meeting on a case could be held with the assistance of an intermediary who looked exclusively into the question of admissibility of evidence.

38. Speakers stressed repeatedly the importance of focal points in both States and international organizations to enhance the dialogue at the country level. The discussion considered whether agreements between States and international organizations could be developed, similar to mutual legal assistance treaties between States. It was further suggested that the focal points should meet regularly, first to establish lines of communication and thereafter to address relevant issues of common concern as they arise. These discussions could cover (a) collection of

evidence, (b) chain of custody and (c) local practice with respect to recovery of assets.

39. With regard to asset recovery, it was reported that in most jurisdictions the financial interests of the international organizations would be recognized in the criminal proceedings against a staff member. However, it was highlighted that cooperation between States and international organizations for asset recovery was not systematically pursued and that one instrument to change this attitude could be the establishment of networks of contact points, similar to the networks established and under development between States.

40. Speakers reiterated the common view (already expressed by the Conference of the States Parties) that the Convention on the Privileges and Immunities of the United Nations provided an adequate and well-functioning legal framework and should not be prejudiced in any way. They stressed that this international legal regime regulated conclusively the right and duty of international organizations to waive immunity when the interests of justice so required, without prejudice to the interests of the organization. International organizations were encouraged to take steps to ensure consistency in their policies on waivers of immunity. The representative of the Office of Legal Affairs explained the legal basis for cooperation, highlighting the Convention on the Privileges and Immunities of the United Nations, the Staff Regulations and Rules and General Assembly resolution 63/119 (although the question of the applicability of that resolution to bribery remained open). The representative further indicated that policies were set out through case law, without being formalized. Examples of such policies were that staff members under investigation were so informed at an early stage of the process and that requests for waivers of immunity were coordinated with counterparts in States to ensure they were sufficiently precise.

41. With regard to referrals of cases to national authorities, speakers confirmed that a case-by-case approach was used and that a referral was conditioned by a request by a State to waive the immunity of the accused. It was reported that diplomatic channels were frequently used, but that a designated contact point in national authorities would expedite procedures. Some speakers also stressed the importance of States parties' adopting "long-arm statutes" that would ensure they retained jurisdiction over their nationals serving as international officials outside the territory of their home country.

42. Speakers stressed the importance of preventive measures against corruption in international organizations. One speaker explained several measures that could be included in a preventive policy: (a) the establishment and/or enhancement of the internal control framework to prevent corruption, (b) the creation or, where appropriate, enhancement of an internal audit function, (c) the establishment and/or enhancement of an independent investigative function, (d) ensuring that international organizations include audit rights in contracts with the private sector, (e) training, including in standards of conduct, and (f) the creation and/or enhancement of an ethics office. It was further recommended that international organizations check the records of perspective personnel before recruitment to see whether investigations against them were pending.

43. Participants concluded that the following actions could potentially enhance the fight against bribery of officials of public international organizations:

(a) International organizations might consider designating a central focal point for receiving and processing requests for assistance from both States parties and other international organizations, inspired by the principles of article 46, paragraph 13, of the Convention against Corruption;

(b) International organizations might consider adopting a public, written policy on cooperation with anti-corruption authorities from both States parties and other international organizations, consistent with the cooperation principles of article 43, paragraph 1, and articles 46 and 48. That policy might include, among other things, procedures for:

(i) Providing information to other international organizations and States parties;

(ii) Referring cases and providing evidence to other international organizations and States parties;

(iii) Using information and evidence received from other international organizations and States parties;

(iv) Requesting assistance from States parties in the recovery of assets lost by the organization through corruption;

(c) Consistent with their domestic legal systems, States parties might consider whether the “central authority” for mutual legal assistance requests they have designated pursuant to article 46, paragraph 13, should also be authorized to process requests for cooperation from international organizations.

44. Some speakers also supported a conclusion spelling out that States parties, consistent with their domestic legal systems, should consider adopting legislation to allow them to use information they have received from international organizations as evidence in corruption cases being processed by their criminal justice systems.

## V. Conclusions

45. In its resolution 2/5, the Conference of the States Parties focused the scope of the open-ended dialogue on the bribery of international public officials on improving cooperation between international organizations and States parties in investigations involving the bribery of officials of international public organizations.

46. It emerged during the open-ended dialogue pursuant to resolution 2/5 that this issue is primarily a technical and not a political one and that any further steps in this regard should focus on improving the technical means of cooperation. While the question of the precise means that should be considered to improve cooperation between international organizations and States parties may require further discussion, there was a convergence of views about several key issues being ripe for consideration.

47. In particular, there appeared to be growing agreement that international organizations might consider adopting a public, written policy on cooperation with anti-corruption authorities from both States parties and other international

organizations, consistent with the cooperation principles of article 43, paragraph 1, and articles 46 and 48 of the Convention.

48. Some possible areas for consideration in regard to such a policy might be procedures for (a) providing information to other international organizations and States parties, (b) referring cases and providing evidence to other international organizations and States parties, (c) using information and evidence received from other international organizations and States parties, (d) requesting assistance from States parties in the recovery of assets lost by the organization through corruption.

49. There was also increasing convergence among many international organizations and States parties that, consistent with their domestic legal systems, States parties might consider whether the “central authority” for mutual legal assistance requests they have designated pursuant to article 46, paragraph 13, should also be designated to process requests for cooperation from international organizations.

50. There was also a growing belief among many international organizations and States parties that the Convention could serve as a model for aligning the internal rules and regulations of international organizations. However, the precise modality of how this would occur remained undecided during the dialogue. For United Nations organizations, for example, the CEB institutional integrity initiative might serve as the vehicle for such alignment. Many States parties also held the view that they should continue to use their voices and votes in the international organizations in which they participate to ensure that those organizations embrace the principles enshrined in the Convention.

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