



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

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Report of the fifth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 17 and 18 November 2016

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.

2. Pursuant to its resolution 5/1, the Conference decided that, on a provisional basis and without prejudice to their independent status and mandates, the open-ended intergovernmental meeting of experts on international cooperation under the Convention should hold its third session back to back with the corresponding meeting of the Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, and that the fourth session of the open-ended intergovernmental meeting of experts should be held at the sixth session of the Conference.

3. In the same resolution, the Conference directed the open-ended intergovernmental meeting of experts, during its meeting at the sixth session of the Conference, to continue studying the issue of the identification and analysis of existing obstacles to law enforcement cooperation in the detection of corruption offences in the framework of the Convention and to draw up recommendations on how those obstacles might be overcome.

II. Organization of the meeting

A. Opening of the meeting

4. The open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption held its fifth session in Vienna on 17 and 18 November 2016.



5. The meeting was chaired by the Vice-President of the Conference of the States Parties to the United Nations Convention against Corruption, Sadiq Marafi (Kuwait). The Chair delineated the framework for discussion and provided explanations regarding the development of the provisional agenda and organization of work.

6. Given the importance of international cooperation and the challenges faced by States parties in fully implementing chapter IV of the Convention, several delegations expressed their concern with respect to the proposed organization of work. They requested the secretariat to schedule future meetings for two full days, thus allowing for sufficient time for deliberations. The secretariat expressed its regret and apologized for the error in the scheduling of the expert meeting, emphasizing that it did not imply that the secretariat did not appreciate the importance of the relevant work, and ensured the group that appropriate action would be taken in future.

B. Adoption of the agenda and organization of work

7. On 17 November 2016, the meeting adopted the following agenda:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Taking stock of country reviews on the implementation of chapter IV of the United Nations Convention against Corruption: findings, lessons learned, good practices and technical assistance needs.
4. Use of the United Nations Convention against Corruption as a legal basis and other good practices in international cooperation.
5. Civil and administrative proceedings relating to corruption.
6. Tools and services of the United Nations Office on Drugs and Crime to promote international cooperation: an update.
7. Adoption of the report, including conclusions and recommendations.

C. Attendance

8. The following States parties to the Convention were represented at the meeting: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Bulgaria, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Czechia, Dominican Republic, Ecuador, Egypt, Germany, Ghana, Greece, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libya, Luxembourg, Malaysia, Mexico, Mongolia, Morocco, Myanmar, Namibia, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Sierra Leone, Singapore, Slovakia, South Africa, Spain, Sri Lanka, State of Palestine, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

9. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

10. The following State signatory to the Convention was represented: Japan.

11. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Commonwealth Secretariat, International Organization for Migration, League of Arab States and Organization for Security and Cooperation in Europe.
12. The United Nations Commission on International Trade Law was represented by an observer.

III. Taking stock of country reviews on the implementation of chapter IV of the United Nations Convention against Corruption: findings, lessons learned, good practices and technical assistance needs

13. In an effort to enhance the exchange of information and synergies between the open-ended intergovernmental expert meetings and the Working Group on International Cooperation, the secretariat provided an overview of the salient points emanating from the deliberations at, as well as the recommendations resulting from, the seventh meeting of the Working Group, which had been held from 19 to 21 October 2016, during the eighth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.
14. Several speakers underlined the need to ensure synergies between the work of the Working Group and the open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption. In that regard, one speaker noted that the issue of international cooperation for asset recovery should be an area of special focus of the open-ended intergovernmental expert meetings, and that, when scheduling future meetings, consideration could be given to holding the open-ended intergovernmental expert meeting back to back or jointly with the meetings of the Working Group on Asset Recovery.
15. The secretariat also introduced the most prevalent trends and findings in the implementation of chapter IV arising from the completed reviews of the first review cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, as well as challenges in the implementation of chapter IV of the Convention and the efforts of the United Nations Office on Drugs and Crime (UNODC) to address those challenges through the provision of technical assistance.
16. He emphasized that, throughout the first review cycle, a significant amount of information had been collected, which allowed for a better understanding of the implementation of the Convention. It was noted that the Review Mechanism provided a unique opportunity to identify areas in which further efforts by States parties were needed to make the international cooperation provisions of the Convention work in practice.
17. A number of speakers emphasized the usefulness of the documentation prepared by the secretariat, in particular the thematic reports on the implementation of chapter IV of the Convention. In that regard, they welcomed the decision of the Implementation Review Group of the United Nations Convention against Corruption to dedicate its resumed eighth session to analysing the information emanating from country reviews in relation to chapter IV of the Convention. One speaker questioned whether, in view of the multi-year workplan that had been adopted by the Implementation Review Group at its resumed seventh session and which structured the thematic work of the Group in such a way as to align the sessions with the respective thematic working groups, it would still be necessary to hold discussions on the outcome of the country reviews at both the Implementation Review Group session and the open-ended intergovernmental expert meeting.

18. One expert emphasized that further studies of the challenges identified through the review process would be needed, and noted the importance of sharing those findings with other parts of the Secretariat.

19. Some delegates emphasized the importance of States cooperating with each other on procedural and evidentiary aspects so as to ensure the efficiency of the prosecution of crimes relating to corruption. Several speakers stressed the importance of compliance with paragraphs 6 and 7 of article 44 of the Convention.

20. A number of delegates emphasized that follow-up on technical assistance needs identified during the review process, including in cooperation with international organizations, was a fundamental pillar of the implementation of the Convention.

21. Many speakers reported on existing institutional structures for international cooperation in their jurisdictions, as well as on recent domestic reforms to ensure better implementation of the provisions of chapter IV of the Convention. Such developments included legislative reforms, enhancement of domestic coordination between relevant authorities, application of dual criminality requirements to mutual legal assistance in a flexible manner, the conducting of enhanced capacity-building activities, development of practitioners' manuals on extradition, mutual legal assistance and asset recovery, the conducting of joint investigations, active participation in law enforcement and asset recovery practitioners' networks, the building of mutual trust and the establishment of good working relationships with counterparts in other jurisdictions, actively using the Convention as a legal basis for cooperation, in particular with regard to extradition, as well as participation in numerous bilateral and multilateral agreements in the area of international cooperation in criminal matters.

22. One delegate emphasized that, for his country, using one central authority for all international criminal legal instruments was regarded as a good practice.

23. Some discussion took place on the issue of evidentiary requirements and standards, the complexity of which some delegations saw as an impediment to effective international cooperation. Further consideration of that matter at future expert meetings was considered useful. One speaker advocated for the simplification of such evidentiary requirements to enhance international cooperation under the Convention.

24. Some speakers referred to obstacles to effective international cooperation, including extensive requirements for the execution of incoming requests for mutual legal assistance, vague bank secrecy laws and the lack of political will.

25. Some speakers suggested that States parties could periodically inform the secretariat regarding the use of the Convention as a legal basis, in a practice similar to the one established among States parties to the United Nations Convention against Transnational Organized Crime.

26. A number of delegates emphasized the importance of the continuing exchange of good practices and successful cases of cooperation between different jurisdictions.

27. Many delegates provided updated information on their central authorities for the directory of competent national authorities under the Convention maintained by UNODC.

28. One delegate underlined the need to have access to up-to-date information on central authorities responsible for extradition, and to receive more accurate information on provisional arrest under paragraph 10 of article 44 of the Convention and relevant procedures. She further suggested including such information in the directory of competent national authorities.

29. One speaker emphasized concerns with regard to the issue of illicit financial flows, and in particular tax evasion, as an obstacle to sustainable development. She also emphasized the negative role played by tax havens and suggested discussing that issue further in future open-ended intergovernmental expert meetings. Another speaker noted that, while there was ongoing international cooperation on the avoidance of tax evasion, it would require further analysis of whether the open-ended intergovernmental expert meeting was the best venue to address those issues.

30. In line with the articles of the Convention and with consideration of the regional and global programmes of UNODC and of country partnership programmes for the 2015-2019 period, one delegation requested the secretariat to plan and implement technical assistance projects to enhance international cooperation at the regional level.

IV. Use of the United Nations Convention against Corruption as a legal basis and other good practices in international cooperation

31. The debate on this agenda item was introduced by a panel discussion on practical aspects and challenges encountered in the field of international cooperation in transnational corruption cases. Experts from Brazil, Nigeria, Singapore and Switzerland shared their national experiences.

32. The panellist from Switzerland highlighted the importance of the Convention as a basis for international cooperation and noted important challenges associated with that practice. In that respect, she pointed out the differences between monist and dualist systems with regard to the implementation of international legal instruments, and the different standards applied in the execution of requests for mutual legal assistance in States with different legal traditions. While Switzerland followed a monist tradition, which allowed for the direct application of self-executing provisions of the Convention, the frequent references in the Convention to national law were an indication that other countries were not obliged to accept that approach. The panellist also outlined the efforts of Switzerland to address those challenges in practice. Such efforts included the adoption of the Act on International Mutual Assistance in Criminal Matters, the maintenance of direct and personal contacts with counterparts in other jurisdictions and adherence to the goals and spirit of the Convention.

33. The panellist from Nigeria underlined that many African States not only were high-risk jurisdictions for money-laundering and corruption but also faced challenges common to developing countries. While the efforts of Nigeria in the area of asset recovery were beginning to bear fruit, as in recent years the amount of recovered assets had increased considerably, there were still considerable obstacles to recovering all corruption proceeds that were found in different jurisdictions. In that context, he made various recommendations on how to improve international cooperation, including through harmonizing and simplifying international good practices on mutual legal assistance, encouraging countries to ratify relevant regional and global conventions, urging countries to simplify mutual legal assistance procedures, encouraging cooperation in the absence of treaties, and creating stumbling blocks for illicit financial flows through enhanced due diligence practices. States parties should also be encouraged to adopt non-conviction-based forfeiture provisions.

34. The panellist from Singapore provided an overview of his country's legal framework on mutual legal assistance. He noted that the Mutual Assistance in Criminal Matters Act allowed for the provision of assistance based on reciprocity and applied the conduct-based approach to the requirement of dual criminality. The panellist further outlined some practical challenges in international cooperation. Such

challenges included: insufficient factual information and lack of clarity in the information provided, no link between the information sought and the underlying criminal conduct, non-compliance with the dual criminality requirement and inaccuracies in translations of relevant documentation. Insufficient direct communication between counterparts was a further challenge. He highlighted some of the practical steps that could enhance the efficiency of international cooperation in transnational corruption cases, including complying with the formal requirements of the requested jurisdiction with regard to evidence-taking, providing a clear and concise statement of facts, stating the precise scope of the assistance sought, ensuring accurate translation of assistance requests and facilitating direct communication between counterparts in different jurisdictions.

35. The panellist from Brazil provided an overview of the organization of the Department of Asset Recovery and International Legal Cooperation of the Ministry of Justice and Citizenship, which served as the central authority for criminal and civil matters. The panellist informed the group of a tracking system that Brazil had developed for proper registration of incoming and outgoing requests for mutual legal assistance, and noted that mandating the central authority with meaningful functions had been instrumental to the success of Brazil in a number of mutual legal assistance cases. The panellist also highlighted previous recommendations of the open-ended intergovernmental expert meeting with regard to strengthening the role and capacity of the central authority. He underscored the importance of collecting data on requests for international cooperation in order to allow for an appropriate analysis of challenges and good practices in that regard.

36. Many delegates welcomed the informative presentations of the panellists. In the ensuing discussion, one speaker stressed the need for exploring synergies between the different subsidiary bodies of the Conference and their respective audiences. He highlighted that the presentations had shown that there would be merit in having present not only experts on international cooperation but also asset recovery practitioners.

37. Several speakers noted the value of the open-ended intergovernmental expert meeting in allowing for open discussions and strengthened interaction among practitioners. Many speakers recalled the paramount importance of effective international cooperation in the fight against corruption, and several delegates reported on various legislative, administrative and other measures taken with the aim of achieving that shared goal. Several delegates shared the experiences of their countries with regard to requests for extradition and mutual legal assistance and spoke of challenges and successes in concrete cases. Several delegates noted the need to remove existing obstacles to international cooperation; the notions of flexibility, proactivity, effectiveness and simplification of requirements were mentioned in that regard. Several speakers underlined the importance of using the Convention, including as a legal basis for international cooperation, and encouraged States to find creative ways to do so.

38. The importance of data collection, along with the existence of effective case management systems, was emphasized. In that regard, the sharing of information with respect to existing software programmes in use domestically was encouraged. The secretariat was requested to facilitate such sharing of information. One speaker underlined the need for States to participate in settlement negotiations. Another speaker, while echoing the importance of the topic, reminded the meeting that the issue was also being discussed by the Working Group on Asset Recovery. Some speakers highlighted the vital importance of technical assistance, given the complex nature of the financial and technical spheres in which corruption often took place.

39. The secretariat reminded the meeting that, while a lot had already been achieved in the area of international cooperation, more remained to be done to increase mutual understanding and strengthen confidence and trust, which were at the heart of successful cooperation. The secretariat noted some areas that would benefit from further analysis, such as the issue of spontaneous transmission of information, the understanding and treatment of non-coercive measures in different jurisdictions, reasons for refusal of requests for extradition and mutual legal assistance, and timelines for the execution of requests.

V. Civil and administrative proceedings relating to corruption

40. The secretariat introduced a draft questionnaire on the practical issues States parties encountered while providing and requesting international cooperation in civil and administrative proceedings relating to corruption offences. The representative of the secretariat outlined how the questionnaire had been prepared to serve as possible guidance for States parties when presenting information relevant to that issue in relation to paragraph 7 of resolution 6/4 of the Conference.

41. The secretariat further noted that, following the completion of the fifth open-ended intergovernmental expert meeting, a note verbale would be circulated to States parties seeking information about designated officials or institutions appointed, where appropriate, as focal points in the matter of the use of civil and administrative proceedings against corruption, including for international cooperation in furtherance of paragraph 8 of resolution 6/4.

42. One speaker presented the experience of his jurisdiction in requesting assistance on civil and administrative matters relating to corruption cases, providing examples of both successful and unsuccessful cases. He noted that there was no uniformity in the treatment of international cooperation requests in civil and administrative proceedings relating to corruption and that there were difficulties in having such requests fully attended to. In that context, he stressed Conference resolution 6/4, in which the Conference had called on States parties, where appropriate, to inform the Secretariat about focal points on the use of civil and administrative measures.

43. Another speaker presented the experience of his jurisdiction with regard to civil and administrative proceedings relating to corruption. Such measures included the ability to confiscate illicitly accumulated assets of government officials through civil measures, the application of administrative liability to legal persons for participation in corruption offences, and a comprehensive analysis of civil and administrative legal acts with regard to possible corruption risks.

44. A number of speakers provided comments and suggestions relevant to the content of the draft questionnaire presented by the secretariat and contained in a conference room paper (CAC/COSP/EG.1/2016/CRP.1). It was clarified by some delegations that the document submitted by Brazil to the Conference at its sixth session, on the use of civil and administrative proceedings against corruption (CAC/COSP/2015/CRP.4), did not reflect a consensus view of treaty obligations by all States parties and that also no consensus had been sought in that regard.

45. Other speakers underlined that the provision of information on civil and administrative measures under resolution 6/4 would be done when feasible and only on a voluntary basis. In that context, one speaker made reference to article 43 of the Convention, which required States parties to consider assisting each other in civil and administrative matters relating to corruption.

46. Another speaker questioned whether the focus of the meeting on assistance in civil and administrative matters was merited, given the continuing challenges faced

with regard to effective international cooperation in criminal matters. Another speaker expressed concern that there had not been enough time to discuss those matters in appropriate depth.

VI. Tools and services of the United Nations Office on Drugs and Crime to promote international cooperation: an update

47. The secretariat made reference to a briefing held in the margins of the meeting on the redeveloped UNODC Mutual Legal Assistance Request Writer Tool. The Tool had been expanded to include additional substantive features, such as guiding components for requesting assistance through videoconferencing, drafting requests on the transfer of criminal proceedings, and requesting assistance involving electronic evidence. Further guidance had been included in the tool to cover other forms of assistance, such as joint investigations and cooperation for conducting controlled deliveries. The added value of the tool was stressed, specifically in relation to efforts to enhance the capacity of practitioners in central authorities with regard to drafting and submitting requests for mutual legal assistance expeditiously.

48. The secretariat provided an update on the online directory of competent national authorities under the United Nations Convention against Corruption, with a specific focus on the information available in relation to central authorities designated pursuant to article 46, paragraph 13, of the Convention. One hundred and twenty States parties had provided notifications to the Secretary-General regarding their central authorities. The secretariat encouraged States parties to continue providing information on their central authorities and to review the accuracy of the information presently available in the directory, as its value lay in providing easy access to the contact details of designated central authorities and facilitating direct dialogue to enhance international cooperation.

49. Following the presentation, some speakers asked if it was technically possible to upload more information than was requested in the electronic form. In particular, there was an interest in including information with respect to the authority responsible for extradition under article 44 of the Convention, in addition to information on the central authority in line with article 46, paragraph 13. The secretariat noted that it would explore creating additional fields which would capture this information, and keep the meeting informed of progress in that regard.

VII. Conclusions and recommendations

50. The meeting reiterated the importance of States parties providing to each other the greatest possible degree of assistance in the investigation and prosecution of corruption cases, including by using the United Nations Convention against Corruption as a basis for international cooperation, as well as enhancing the efficiency of international cooperation through endeavouring to simplify the relevant procedures where consistent with domestic law.

51. The experts reaffirmed the recommendations made at their third and fourth meetings (see CAC/COSP/EG.1/2014/3 and CAC/COSP/EG.1/2015/3). Furthermore, the meeting agreed on the following recommendations:

(a) States parties should continue their efforts to use the Convention as a legal basis for extradition and mutual legal assistance and, in particular with regard to extradition, if they did not use the Convention as a legal basis, they should seek, where appropriate, to conclude treaties. States parties should endeavour to keep statistics on the use of the Convention as a legal basis for extradition and mutual legal

assistance and should, where available, provide information on the use of the Convention as a legal basis for actual cases to the secretariat on a regular basis;

(b) Furthermore, where available, States parties should continue to share with the secretariat, for further dissemination, information on electronic tools and systems used by national authorities for processing and tracking extradition and mutual legal assistance requests;

(c) States parties should continue to provide to the secretariat information on the implementation of chapter IV of the Convention, with a view to the secretariat expanding its analytical work with regard to challenges in international cooperation based on the Convention and, to the degree it was relevant, sharing the outcomes of that work with other relevant parts of the secretariat;

(d) The secretariat should continue its work on bringing to the attention of the meetings practical topics relevant to the implementation of the provisions of the Convention on international cooperation. These could include the reasons for the refusal of requests for assistance based on the Convention, the practice of conducting consultations prior to such refusals, timelines required to process requests for international cooperation, cases of spontaneous sharing of information under the Convention, and the nature of non-coercive measures in different jurisdictions;

(e) The secretariat should continue its work on the analysis of technical assistance needs in the area of international cooperation, including in the important areas of the operations of central authorities and the use of the Convention as a legal basis for such cooperation, emanating from the Implementation Review Mechanism in order to allow the Group to consider these needs in a more systematic manner and with the understanding that technical assistance was crucial for the successful implementation of the Convention;

(f) States parties should continue updating the information on their central authorities on mutual legal assistance as mandated by the Convention, on extradition as a good practice, and on national focal points on asset recovery contained in the online directory of competent national authorities under the United Nations Convention against Corruption maintained by the secretariat;

(g) The secretariat should explore the possibility of creating a separate section under the online directory of competent national authorities on central authorities which would contain information on the requirements and procedures for granting extradition under article 44 of the Convention. Furthermore, future work of the Group should focus more on the implementation of article 44 of the Convention;

(h) Where applicable and on a voluntary basis, States parties should continue to provide to the secretariat information on civil and administrative proceedings relating to corruption, including by informing the secretariat about designated officials or institutions appointed as focal points on the use of civil and administrative proceedings against corruption, including for international cooperation;

(i) When spontaneously sharing information on corruption offences with other States parties, States parties may wish to consider, where appropriate and on a voluntary basis, the sharing of information on relevant civil and administrative proceedings;

(j) The open-ended intergovernmental expert meeting should continue its efforts to further enhance synergies between its work and the work conducted under the framework of the Implementation Review Group, the Working Group on Asset Recovery and the Working Group on International Cooperation. In that regard, the secretariat should explore the possibility of holding back-to-back or joint meetings of that group with the sessions of the Working Group on Asset Recovery.

VIII. Adoption of the report

52. On 18 November 2016, the open-ended intergovernmental expert meeting adopted the report on its fifth session (CAC/COSP/EG.1/2016/L.1 and L.1/Add.1-2).
