



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

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**Report on the meeting of experts to enhance international
cooperation under the United Nations Convention against
Corruption held in Vienna on 22 and 23 October 2012**

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 that 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.



II. Organization of the meeting

A. Opening of the meeting

3. The experts to enhance international cooperation under the United Nations Convention against Corruption held a meeting in Vienna on 22 and 23 October 2012.

4. The Chair took note of the meeting of the Working Group on International Cooperation of the Conference of the Parties and highlighted the synergies and complementarities between the Working Group and the meeting of experts. The Working Group had reached a number of conclusions at its meeting, including on the importance of regional networks of prosecutors and central authorities in facilitating international cooperation in common matters under the Organized Crime Convention, police-to-police cooperation and effective inter-agency cooperation among various law enforcement agencies and prosecutorial or judicial officials. Some of the recommendations included focusing further on the role of liaison magistrates, prosecutors and police attachés in facilitating international cooperation and securing formal and informal communication channels for the regional networks.

5. The Secretary of the Conference of the States Parties to the United Nations Convention against Corruption recalled resolution 4/2 and the mandates of the Working Group and the meeting of experts. It was noted that the central authorities designated under both the Convention against Corruption and the Organized Crime Convention were often the same and that the provisions of those conventions were largely identical, although the Convention against Corruption contained greater detail and had also integrated provisions on international cooperation for purposes of confiscation into a separate chapter on asset recovery. The findings of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, established by the Conference in its resolution 3/1, provided for robust data on practices in the area of international cooperation under the Convention to guide the meeting. In line with the practice established by the Open-ended Intergovernmental Working Group on Asset Recovery, which had adopted a workplan through the sixth session of the Conference, to be held in 2015, participants were encouraged to discuss a road map of future work for the meeting in conjunction with the work of the Working Group on International Cooperation.

B. Adoption of the agenda and organization of work

6. On 22 October, 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:
 - (a) Extradition:
 - (i) Presentation by the Secretariat of the findings on the implementation of article 44 of the United Nations Convention against Corruption resulting from the completed reviews of the first and second years of the first cycle of the Review Mechanism;
 - (ii) Round-table discussion;
 - (b) Mutual legal assistance:
 - (i) Presentation by the Secretariat of the findings on the implementation of article 46 of the United Nations Convention against Corruption resulting from the completed reviews of the first and second years of the first cycle of the Review Mechanism;
 - (ii) Round-table discussion.
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.

C. Attendance

7. The following States parties to the Convention were represented at the meeting: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Brunei Darussalam, Cambodia, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Ecuador, Egypt, El Salvador, Finland, France, Greece, Indonesia, Iran (Islamic Republic of), Israel, Italy, Jordan, Kuwait, Lebanon, Libya, Luxembourg, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Philippines, Portugal, Romania, Russian Federation, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United States of America, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.
8. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.
9. The following States signatories to the Convention were represented by observers: Côte d'Ivoire, Czech Republic and Japan.
10. Palestine, an entity maintaining a permanent observer mission to the United Nations, was represented.
11. The following Secretariat units, United Nations bodies, funds and programmes, institutes of the United Nations crime prevention and criminal justice programme network, specialized agencies and other organizations of the United

Nations system were represented by observers: United Nations Commission on International Trade Law and Korean Institute of Criminology.

12. The following intergovernmental organizations were represented by observers: Economic Community of West African States, European Judicial Network, International Anti-Corruption Academy, International Criminal Police Organization (INTERPOL) and Ibero-American Legal Assistance Network (IberRed).

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

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

A. Extradition

14. A representative of the secretariat introduced the information gathered on extradition through the Review Mechanism, as contained in the thematic report prepared by the secretariat entitled “Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption” (CAC/COSP/IRG/2012/8). Most States indicated that it was possible to use the Convention as a legal basis for extradition, although that had rarely been done in practice. There were a number of similarities in the manner in which States addressed extradition. While dual criminality was a condition for granting extradition, all States applied the conduct-based test. Extraditable offences were generally defined as those offences punishable by deprivation of liberty of at least one year, which was usually the case for corruption-related offences, while a few countries relied on a list of offences identified as extraditable. None of the States parties under review considered corruption offences to be political offences that allowed for the refusal of extradition. All reviewed States parties had legal mechanisms to allow for custodial measures pending extradition proceedings. Half of the States under review allowed for simplified extradition proceedings, generally in cases where the person sought had consented to extradition. All reviewed States allowed for the refusal of an extradition request in line with the discrimination clause.

15. Based on the outcome of the reviews, there was a general distinction to be drawn between civil-law countries and common-law countries. In relation to the incorporation of international treaties into domestic legal systems, civil-law countries relied on the direct applicability of a treaty provision when it was self-executing, while common-law countries were generally required to enact domestic legislation to implement the provision. It was further noted that common-law countries generally required that a higher evidentiary threshold be satisfied in order to grant extradition. Civil-law countries were also more likely not to extradite their own nationals.

16. Speakers highlighted the importance of the Convention against Corruption and its provisions on international cooperation. A number of speakers reported that their national legislation allowed for the use of the Convention as a legal basis for extradition. It was noted, however, that not all States had adopted that practice as a

means of facilitating extradition. Speakers referred to other legal bases for extradition, such as bilateral and regional treaties, reciprocity and ad hoc arrangements, noting the relationship between those bases and the Convention. Some speakers noted the difficulties encountered with regard to maintaining statistics on the use of the Convention.

17. Speakers provided an overview of their national legislative regimes and practices regarding extradition. The implementation of treaty obligations, national capacities and the political will of States parties were considered to be fundamental to facilitating international cooperation.

18. Speakers also reported on a number of obstacles that had been encountered with regard to extradition: national legal provisions not being applied in practice; complex extradition procedures or a lack of established procedures; incomplete information; translations of poor quality, in particular of legal terminology; so-called “fishing expeditions”, when the person sought had not yet been located; and a lack of open communication between requesting and requested States. One speaker highlighted the unresponsiveness of some States to requests made or the invoking of procedural reasons for denying requests. Several speakers also pointed to the challenges faced in extradition cases before domestic courts.

19. Some speakers noted that the non-extradition of nationals had posed a challenge to effective extradition for their countries. Several speakers noted that, in their countries, provisions allowed for the extradition of their own nationals. One speaker noted that the nationality of persons sought should be determined based on their nationality at the time of the commission of the offence, regardless of subsequent nationalities obtained.

20. Several speakers referred to international cooperation at the bilateral, regional and international levels. The importance of arrangements to facilitate international cooperation on a regional or historical basis (e.g. among Nordic countries, the European arrest warrant and the London Scheme for Extradition within the Commonwealth) was highlighted. Speakers also emphasized the usefulness of networking and personal contacts in successful international cooperation. Liaison magistrates were effective between close partners, and networks of liaison focal points provided a cost-effective alternative to posting liaison magistrates abroad.

21. Several speakers noted the necessity of developing capabilities, ranging from the provision of model laws and the simplification of extradition proceedings and evidentiary standards to advisory services and training sessions for central authorities, as well as raising greater awareness among national and international actors in the area of extradition. Several speakers highlighted the initiation of open dialogue between the requesting and requested States, both before an official request was submitted and during the process, as a way to expedite the conclusion of extradition proceedings.

22. One speaker noted the benefits of using translation companies that were familiar with the specificities of the legal terminology of his country. Further, the national authorities of his country had adopted a flexible approach to the means of communication, allowing for e-mail, videoconferences and on-site consultations with the authorities of the requested State.

B. Mutual legal assistance

23. A representative of the secretariat introduced the section on mutual legal assistance of the thematic report on the implementation of chapter IV, observing that the extent and scope of legislative regulations on mutual legal assistance ranged from comprehensive laws to reliance on existing treaties without detailed national legislation. The following aspects of mutual legal assistance were reported as being addressed in the same or a similar manner by the States under review: the provision of mutual legal assistance for offences involving legal persons; the spontaneous transmission of information often being done without reference to a specific regulation in domestic law; dual criminality requirements either not being applied to mutual legal assistance requests or being applied only to a limited extent; and the grounds for refusal of a request being generally the same in most States. There were also aspects with regard to which no uniformity was observed, among them the purposes for which mutual legal assistance could be requested, the acceptance of verbal requests, the use of videoconferences, and the practice regarding consultations with requesting States before refusing a request or postponing its execution. Statistical information on the number of requests relating to corruption cases, including as a percentage of the overall number of incoming and outgoing requests, was for the most part missing.

24. Speakers referred to the challenges presented by the concept of liability of legal persons and the correct identification of the relationship between the natural and the legal person. It was noted that this issue required further analysis, as did a number of bilateral and regional agreements.

25. Many speakers stated that in their countries the Convention was used as a legal basis for mutual legal assistance, and one speaker noted that it was becoming more important given the increasing need to cooperate at the global level. Speakers reported that their countries rendered mutual legal assistance on the basis of reciprocity and treaty agreements. One speaker encouraged countries to use the Convention as a legal basis for mutual legal assistance or as a supplement to bilateral treaties. He further suggested that outdated bilateral treaties could be amended by referring to the Convention against Corruption and the Organized Crime Convention as models.

26. Speakers noted that the standards for mutual legal assistance were generally perceived to be less strict than those for extradition, and encouraged States to handle mutual legal assistance in a more flexible manner.

27. A number of speakers noted that dual criminality was not a requirement for mutual legal assistance in many countries. Others reported that dual criminality was needed in practice to obtain some kinds of evidence and for the freezing of funds. Speakers discussed the appropriate timing of the consideration of dual criminality. It was noted that some courts had held that the determination of whether dual criminality existed should be based on the laws in effect at the time of the decision to provide mutual legal assistance rather than at the time of the commission of the offence, since due process concerns were already addressed by the fact that the act was considered a criminal one in the country in which it occurred.

28. Domestic and international coordination was considered an important area for further development. Speakers highlighted the role of central authorities in

providing mutual legal assistance in accordance with article 46, paragraph 13, of the Convention against Corruption, noting that the direct transmission of requests between central authorities produced swifter results than communications through diplomatic channels. Speakers considered it a good practice to designate one institution as the central authority for all related international legal instruments. One speaker noted that the central authority of his country had also been designated as its asset recovery focal point, while others noted that they had one central authority responsible for both mutual legal assistance and extradition. Several speakers encouraged States to establish central authorities that would be in a position to take an active, rather than purely a formal, role in the process.

29. A number of speakers referred to their national efforts to establish or strengthen efficient national institutions for mutual legal assistance, including for the purpose of seizure, freezing and confiscation of proceeds of corruption. Speakers highlighted the fact that information-sharing and coordination at the national level were crucial to the success of mutual legal assistance.

30. Speakers emphasized that informal exchanges before and during the formal mutual legal assistance procedure greatly facilitated assistance. Many speakers referred to the ongoing practice of their central authorities of informally consulting on requests before formally submitting them, as well as exchanging information informally between law enforcement authorities or between financial intelligence units. One speaker encouraged States to enhance communication between institutions with different mandates, such as with the financial intelligence units and police investigation units of other countries (so-called “diagonal cooperation”).

31. Speakers highlighted the fact that, while many countries had appropriate legislation, practical challenges remained with regard to mutual legal assistance. Speakers referred to obstacles caused by formal and procedural standards and strict legal requirements that exact banking information had to be provided before funds could be located or frozen. Further legal and practical problems related to the admission of videoconferences in mutual legal assistance cases. Other problems related to the poor quality of translations and the exact identification of persons, including through the different translations of their names in different languages.

32. A number of speakers reported difficulties that had arisen owing to delays in receiving responses to requests for mutual legal assistance. Others reported that requesting States were not always able to provide further information when it was sought to allow for a request to be granted.

33. Some speakers referred to initiatives and tools that facilitated mutual legal assistance. It was recognized that networks, including regional networks such as IberRed and the European Judicial Network, were useful for enhanced informal information exchange and consultation. One speaker held that regional networks should be increasingly interlinked in order to move towards global information exchange. The challenges of exchanging information relating to corruption cases were noted, as was the role that INTERPOL could play in facilitating the global exchange of information. Speakers encouraged States to make full use of existing tools, such as secure information platforms, manuals on mutual legal assistance prepared in the context of the Group of Eight and the Group of Twenty and the knowledge products developed by the United Nations Office on Drugs and Crime (UNODC). Speakers also encouraged the collection of statistics on mutual legal

assistance in corruption cases, as well as the further study of the challenges and practical solutions related to mutual legal assistance.

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

34. A representative of the secretariat provided a background presentation on priorities and needs for technical assistance. Recalling the close link between the Review Mechanism and technical assistance, she presented statistics on the technical assistance needs resulting from 24 country reviews on the implementation of chapter IV of the Convention. Fourteen States had requested technical assistance with regard to chapter IV, and 11 of them had made particular requests in relation to articles 44 and 46. While there were some differences between regions, most requests were centred on legislative drafting, legal advice, model treaties and capacity-building. Specific requests related to substantive expertise and assistance with foreign languages in order to remove obstacles to communication between central authorities.

35. A representative of the secretariat mentioned relevant tools developed by UNODC, such as the online directories of competent national authorities and the Tools and Resources for Anti-Corruption Knowledge (TRACK) portal (www.track.unodc.org), which were web-based tools for the dissemination of legal knowledge on countering corruption, as well as the Mutual Legal Assistance Request Writer Tool, which provided substantive support on the preparation of requests. She also referred to a number of recent UNODC publications on international cooperation: the *Manual on Mutual Legal Assistance and Extradition*, the *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* and the *Handbook on the International Transfer of Sentenced Persons*.

36. In the ensuing debate, several speakers expressed the need for long- and short-term technical assistance for members of the judiciary, police and other practitioners of their countries, who needed to be made aware of international best practices and to acquire a better knowledge of legal systems in order to deal effectively with corruption investigations and the preparation of international cooperation requests. They highlighted the impact of communication challenges between central authorities. Several speakers reported on technical assistance currently provided to their countries, and one speaker highlighted the link between that assistance and its country review under the Review Mechanism. Two representatives of international organizations shared their experiences with regard to their programmes, focusing on capacity-building provided to different categories of practitioners.

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

37. Speakers addressed the synergies between the work of the meeting of experts and the Working Group on International Cooperation. Many speakers expressed their preference for organizing joint meetings of the two groups in the future,

considering that the discussion of similar topics in both groups could benefit from their respective experience with regard to both conventions and that resources could be conserved. A number of speakers suggested organizing a joint meeting to test the practicability of that approach. Other speakers expressed caution and were of the view that the feasibility of joint meetings should be further assessed. The Chair noted that the authority to take action with regard to combining the meetings of the two groups lay with the conferences of the parties to the two conventions, while the working groups could make recommendations to that effect only for the consideration of the conferences.

38. Some speakers highlighted the close thematic links between the work of the meeting of experts and the Open-ended Intergovernmental Working Group on Asset Recovery, established by the Conference in its resolution 1/4, and one speaker referred to the thematic discussion at the twenty-third session of the Commission on Crime Prevention and Criminal Justice, to be held in Vienna in 2014, the theme of which would be “international cooperation in criminal matters”.

39. Speakers emphasized that the agenda of the meeting should be conducive to discussions among expert practitioners to exchange views on practical problems and advance towards concrete solutions to international cooperation challenges. In that regard, it was suggested to organize a meeting of central authorities. If joint meetings were held, the agenda should be carefully structured to allow for the discussion of common themes, as well as specific topics relating to each of the instruments.

VI. Conclusions and recommendations

40. The meeting of experts welcomed the briefing provided by the secretariat on the outcome of the review process on chapter IV of the Convention against Corruption and requested the secretariat to continue to brief the meeting on its analysis of information received in the context of the reviews of chapter IV, with a view to allowing the meeting to make recommendations to the Conference on follow-up actions required for ensuring the full implementation of chapter IV.

41. In that context, participants noted the lack of information provided by States parties on the practical implementation of chapter IV, including statistical information, as part of the Review Mechanism, which was regarded as an important addition to the information on legislative provisions. The meeting recommended that States parties consider adopting a common approach on the gathering of statistics.

42. The meeting recommended that the secretariat tailor its advisory services and technical assistance in order to respond to the needs of States parties in fully implementing chapter IV, based on the challenges identified through the Review Mechanism and during the meeting.

43. The meeting also recommended that the Conference might wish to request States parties to make use of the meeting of experts as a platform to exchange information on good practices and new developments in the area of international cooperation and on practical challenges relating to international cooperation. In that regard, the Conference might also wish to request the secretariat to facilitate, upon

request, the arrangement of side meetings, including during the meetings of experts, to discuss specific challenges relating to ongoing international cooperation requests.

44. The meeting noted the importance of informal contacts, where permitted, and networking, and recommended that regional cooperation networks be invited to participate in the expert meetings.

45. In order to improve mutual understanding and the quality of requests, the meeting recommended encouraging States parties to establish informal channels of communication early on in the process and prior to submitting formal requests for international cooperation. Furthermore, the meeting recommended that States parties should make available information on domestic requirements for granting international cooperation (including format, language and addressee). In that regard, the Conference might wish to request the secretariat to gather such information and make it available as part of the online database of central authorities. Noting that information was already available for Member States, the meeting recommended that Member States take advantage of the many relevant publications that UNODC had produced. The meeting highlighted the importance of the secretariat keeping up to date the information included in the legal library on chapter IV, with legislation collected as part of the implementation reviews. Outside the review process, States parties were encouraged to provide information on legislative developments to the secretariat.

46. The meeting recommended that the Conference consider calling upon States parties to further explore ways of strengthening international cooperation by:

- (a) Using the Convention as a legal basis for international cooperation;
- (b) Raising awareness among their relevant authorities, including central authorities and the judiciary, where appropriate, of the modalities of international cooperation and the terms of the Convention, including its use as a legal basis for international cooperation;
- (c) Where appropriate, continuing to negotiate bilateral and regional treaties to facilitate cooperation in line with the Convention;
- (d) Encouraging adherence to relevant regional treaties;
- (e) To the degree feasible, within their domestic laws, expediting procedures and simplifying evidentiary requirements for extradition.

47. In accordance with article 43, paragraph 1, of the Convention, the meeting recommended that States parties continue to consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

48. The meeting further recommended that the Conference remind States parties to comply with and fully implement the provisions of the Convention in all international cooperation proceedings and encouraged States parties to bring problems, impediments and challenges encountered in international cooperation proceedings to the attention of the meeting for consideration.

49. The meeting proposed that it further explore ways and means of effectively implementing the requirement of article 44, paragraph 17, of the Convention to

consult with the requesting State before refusing extradition, particularly in cases where the decision to deny the requests rested with the judicial authority.

50. The meeting recommended that it continue to encourage discussion and seek practical solutions to challenges related to extradition and mutual legal assistance.

51. The meeting recommended that States parties that had not yet done so designate a central authority responsible for requests for mutual legal assistance in accordance with article 46, paragraph 13, of the Convention and provide updated information, and asked the secretariat to send another note verbale to that effect.

52. The meeting strongly encouraged States parties and signatories to be represented by expert practitioners at future meetings of experts.

53. The meeting requested the Secretariat to send a note verbale to all Member States to seek their views on the agenda, structure and topics of the next meeting of experts. Based on the views of Member States, the extended bureau would decide on the draft agenda for that meeting. The meeting also requested the secretariat to solicit, through the same note verbale, views and suggestions from States parties on possible joint sessions of the two groups. The meeting further requested the secretariat to prepare, taking into account the replies received to that note verbale, a document on the possible further course of action, for the consideration of the Conference at its fifth session.

54. The meeting requested the secretariat to send an additional note verbale to Member States soliciting information on the concept of the liability of legal persons in the context of the provision of mutual legal assistance.

VII. Adoption of the report

55. On 23 October 2012, the meeting of experts adopted the report on its first meeting (CAC/COSP/EG.1/2012/L.1 and Add.1-2).
