



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

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Report of the third open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 9 and 10 October 2014

I. Introduction

1. In resolution 4/2, entitled “Convening of open-ended intergovernmental expert meetings to enhance international cooperation”, adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its fourth session, held in Marrakech, Morocco, from 24 to 28 October 2011, the Conference decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance and to convene one such meeting during its fifth session and, prior to that, within existing resources, at least one intersessional meeting.
2. In the same resolution, the Conference 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 Convention under the guidance of the Conference; (c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices for strengthening capacities at the national level; (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition; and (e) assist the Conference in identifying the capacity-building needs of States.
3. Open-ended intergovernmental expert meetings to enhance international cooperation convened pursuant to resolution 4/2 have held substantive discussions on practical issues pertaining to international cooperation under the pertinent provisions of the Convention, mainly those on extradition and mutual legal assistance. The first such meeting was held in Vienna on 22 and 23 October 2012.



The second meeting was held in Panama City on 25 and 26 November 2013, during the fifth session of the Conference of the States Parties to the Convention.

4. In accordance with its resolution 5/1, the Conference of the States Parties decided that, in order to ensure the effective use of resources, on a provisional basis and without prejudice to their independent status and mandates, the third open-ended intergovernmental meeting of experts on international cooperation under the United Nations Convention against Corruption would be held back to back with the meeting of the Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime, if feasible, at separate times and at the same venue, and that the subsequent open-ended intergovernmental expert meeting would be held during the sixth session of the Conference.

II. Organization of the meeting

A. Opening of the meeting

5. The third open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption was held in Vienna from 9 to 10 October 2014. It was opened on Thursday, 9 October 2014, at 3 p.m., immediately after the completion of the fifth meeting of the Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime, which was held on 8 October and the morning of 9 October 2014, during the seventh session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.

6. The meeting was chaired by Thomas Burrows (United States of America). In his opening remarks, the Chair made reference to the mandate of the expert meeting and delineated the framework for discussion, providing explanations regarding the preparation of the provisional agenda and organization of work.

7. One speaker stressed the need to avoid overlap between the work and mandates of the expert meeting and the Implementation Review Group in relation to issues pertaining to the review of implementation of chapter IV of the Convention, on international cooperation. In this regard, the secretariat recalled the mandate given by the Conference of the States Parties, in its resolution 4/2, to the expert meeting to assist in, and contribute to, the implementation of the related provisions of the Convention. The complementarity of the work of the expert meeting and the Implementation Review Group was also highlighted.

B. Adoption of the agenda and organization of work

8. On 9 October 2014, the third expert meeting to enhance international cooperation under the United Nations Convention against Corruption amended its provisional agenda to include an item entitled "Other matters", and then adopted the agenda, which read as follows:

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 and technical assistance needs.
4. International cooperation in civil and administrative proceedings for the detection of offences under the Convention, including for the identification, freezing and confiscation of assets derived from such offences.
5. Obstacles to law enforcement cooperation in the detection of offences under the Convention.
6. Other matters.
7. Conclusions and recommendations.
8. Adoption of the report.

C. Attendance

9. The following States parties to the Convention were represented at the meeting: Afghanistan, Algeria, Angola, Argentina, Austria, Bahrain, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Canada, Chile, China, Costa Rica, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, France, Ghana, India, Iran (Islamic Republic of), Iraq, Jordan, Kenya, Kuwait, Latvia, Lebanon, Libya, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Norway, Oman, Pakistan, Panama, Paraguay, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Spain, State of Palestine, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.
10. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.
11. The following State signatory to the Convention was represented by an observer: Japan.
12. The following United Nations programme was represented by an observer: United Nations Development Programme.
13. The following intergovernmental organizations were represented by observers: International Anti-Corruption Academy, Organization for Security and Cooperation in Europe, Council of Europe and Commonwealth Secretariat.
14. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

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

15. A representative of the secretariat delivered an updated presentation on the most important conclusions and trends arising from the completed reviews of the ongoing first cycle of the Mechanism for the Review of Implementation of the Convention, on the review of implementation of chapter IV of the Convention. The sources used for that presentation were the thematic report prepared by the secretariat entitled “Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 44-50)” (CAC/COSP/IRG/2014/8) and the report prepared by the secretariat entitled “Regional implementation of chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption” (CAC/COSP/IRG/2014/9).

16. The presentation of the secretariat included an analysis of the findings of the reviews on cross-cutting issues dealt with in both extradition and mutual legal assistance proceedings (treaty framework and the use of the Convention as legal basis for cooperation; the importance of keeping statistical data on international cooperation requests; and the time needed for granting extradition and mutual legal assistance requests). The presentation also focused on selected implementation issues regarding mutual legal assistance (the coordinating role and functions of central authorities), cooperation in conducting special investigative techniques and regional approaches to law enforcement cooperation. The representative of the secretariat also presented additional observations stemming from the ongoing implementation review process regarding the use of liaison officers in different regions.

17. The debate on this agenda item started with a presentation by the Chair, who informed the experts about the recommendations made by the Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime at its meeting held on 8 and 9 October 2014 with regard to issues of common interest and relevance, such as the coordinating role and functions of central authorities in mutual legal assistance procedures.

18. A number of speakers emphasized the progress made in the implementation of relevant provisions of the United Nations Convention against Corruption and presented information on recent national reforms and initiatives with regard to practical aspects of international cooperation under the Convention.

19. Many speakers underlined the importance of strengthening existing networks, including networks on international cooperation and on countering corruption, that bring together focal points and practitioners from different jurisdictions to exchange experience, expertise and good practices. The creation on a secure website of a virtual network of contact persons from central or other authorities was suggested by some speakers as an innovative way to allow for informal consultations prior to the formal submission of mutual legal assistance requests.

20. Another speaker suggested that meetings be organized for central or other competent authorities, under the aegis of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, to facilitate the exchange of experience and information.
21. A number of speakers highlighted the importance of broad adherence to regional instruments containing provisions on international cooperation, including, where possible, States parties from other regions as well.
22. Some speakers referred to practical aspects of international cooperation, including the need to simplify the application of the dual criminality requirement in extradition proceedings, as well as the need to ensure the confidentiality of mutual legal assistance requests with a view to ensuring the efficiency and effectiveness of related investigations.
23. Other speakers suggested that informal discussions before the submission of mutual legal assistance requests, and subsequent consultations between relevant authorities, could be successfully used to tackle many of the challenges encountered in mutual legal assistance practice. The use of the channels of communication provided by the International Criminal Police Organization (INTERPOL) to facilitate consultations was highlighted. In this regard, it was suggested by one speaker that templates containing guidance on the legal requirements for the submission and execution of mutual legal assistance requests could be prepared and made available to facilitate mutual understanding.

IV. International cooperation in civil and administrative proceedings for the detection of offences under the Convention, including for the identification, freezing and confiscation of assets derived from such offences

24. In introducing this agenda item, the secretariat referred to resolutions 5/1 and 5/3 of the Conference of the States Parties to the Convention, in which the Conference had encouraged States parties to afford one another, when feasible, international cooperation in civil and administrative proceedings for the detection of corruption offences and for the identification, freezing and confiscation of assets derived from offences covered by the Convention, respectively.
25. Reference was made to the progress report prepared by the secretariat on international cooperation under the United Nations Convention against Corruption, including technical assistance and other activities (CAC/COSP/EG.1/2014/2). The secretariat explained that the progress report represented a first effort to compile information from States parties and signatories to the Convention on their national approaches to dealing with international cooperation in civil and administrative proceedings for the detection of Convention offences, including for the identification, freezing and confiscation of assets acquired from such offences.
26. However, the secretariat noted that more information from a wider sample of Member States was needed to assess the added value of cooperation among States parties in civil and administrative matters relating to corruption. It was agreed that the mandate of the Conference of the States Parties, as contained in resolution 5/1, and the request to the Secretariat to prepare a relevant report for submission to the

Conference at its sixth session, to be held in 2015, offered an opportunity to continue the analysis of the issues under discussion. In this regard, it was suggested that the secretariat solicit information from States parties and signatories to the Convention that had not yet responded and to seek updates on information already provided.

27. One speaker noted that the template on international cooperation in civil and administrative procedures relating to corruption, which had been adopted by the Group of Twenty (G-20) Anti-Corruption Working Group during its most recent meeting, held in Sydney, Australia, on 26 and 27 February 2014, could be a useful tool for the provision of relevant information and should be used to encourage more States parties to submit relevant information. The speaker also urged States to submit narrative text accompanying the template, which would describe in detail the domestic measures under discussion. He further noted that other sources of information-gathering could be explored, including through the work of the Working Group on Asset Recovery of the Conference of the States Parties. Moreover, the forthcoming Thirteenth United Nations Congress on Crime Prevention and Criminal Justice could offer an opportunity for debate and information-gathering under its agenda item on international cooperation.

28. The same speaker referred to the parallel process of compiling relevant information based on the aforementioned template within the framework of the G-20 Anti-Corruption Working Group. The report analysing the responses received would be made available for the meeting of the G-20 Working Group to be held in Paris from 16 to 18 October 2014. It was also available as a conference room paper for the current meeting of experts, as a reference document, although it had not yet been approved by G-20.

29. Some speakers provided an overview of national practices on international cooperation and further outlined the importance of administrative and civil mechanisms in the investigation and prosecution of corruption cases in their countries. They also stressed the need for overcoming barriers to international cooperation and asset recovery by using such mechanisms in a complementary manner, especially in cases where the criminal liability of legal persons could not be established.

30. Further, civil and administrative avenues were considered important when it was not possible to open criminal procedures owing to the absence of the alleged offender. It was noted that instituting civil proceedings in foreign countries was an avenue for claiming damages and recovering proceeds of corruption. One speaker reported that detailed legal provisions on administrative sanctions, including confiscation, were contained in the administrative law of his country.

31. Another speaker highlighted the importance of building a common understanding of the different approaches to the prosecution of corruption offences, which could involve criminal or administrative liability of legal persons in different jurisdictions.

32. One speaker reported that the prosecutorial authorities of her country could provide cooperation during the pretrial stage equally at the criminal, civil and administrative levels. She further noted that over 72 agreements on information exchange with foreign counterparts in the area of financial crime and

money-laundering had been concluded and had enabled authorities to more effectively recover proceeds of corruption.

33. One speaker suggested that further analysis should be conducted on the issue of the application of the dual criminality requirement in international cooperation in relation to cases involving legal persons. In this connection, he noted that the absence of rules in some jurisdictions enabling the treatment of legal persons as perpetrators of criminal offences could create obstacles to international cooperation in relation to offences for which legal entities could be held accountable, to the extent that dual criminality was required. In addition, the speaker questioned whether the dual criminality requirement had to apply in international cooperation in civil and administrative proceedings involving legal persons.

V. Obstacles to law enforcement cooperation in the detection of offences under the Convention

34. A representative of the secretariat introduced the information gathered on law enforcement through the Mechanism for the Review of Implementation of the Convention, as contained in the thematic report prepared by the secretariat on the implementation of chapter IV (review of articles 44-50) (CAC/COSP/IRG/2014/8), as well as the report prepared by the secretariat on regional implementation of chapter III (CAC/COSP/IRG/2014/9). It was highlighted that bilateral treaties or agreements or more flexible schemes or arrangements, such as memorandums of understanding between competent authorities, were used predominantly in relation to law enforcement cooperation.

35. Reference was made to specific challenges encountered by practitioners relating to seizure and confiscation of proceeds of crime, including assets derived from corruption, the different national approaches to confiscation issues, the inability to identify bank accounts and the spontaneous transmission of information. Participants noted that law enforcement agencies were an important link in the fight against corruption and that their work needed to be strengthened.

36. Some speakers presented good practices, including the development of centralized databases containing information on financial accounts. It was noted that this practice could facilitate domestic investigations and expedite mutual legal assistance procedures. Participants agreed that the collaboration of law enforcement authorities was broadly recognized as a vital component of an effective strategy against corruption crimes.

37. Several speakers further referred to the importance of cooperation between law enforcement authorities and the assignment of liaison magistrates or liaison officers to other jurisdictions. Several speakers highlighted the importance of regional cooperation networks.

38. Some speakers shared information on the systems in their countries to detect assets and the establishment of specialized financial intelligence units that received information from different focal points and analysed it, which performed a critical role in the fight against corruption and organized crime.

39. Some speakers noted that States should continue to explore opportunities to actively engage in internal coordination between central authorities and relevant

agencies involved in the execution of international cooperation requests. The existence of a single central authority for all conventions to which a State is a party was also supported by some speakers.

40. Other speakers noted that the specialization of judges, law enforcement officers and other relevant actors on issues pertaining to international cooperation would help to enhance the effectiveness of different forms of international cooperation.

VI. Other matters

41. A number of speakers favoured the organization of joint meetings of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption and the Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in view of the similar topics discussed by the two groups. In this context, it was further proposed that, where the issues under discussion by the two groups differed, as, for example, in the case of international cooperation in civil and administrative proceedings, a separate topic on the agenda of a joint meeting could be envisaged.

42. Other speakers spoke in favour of retaining the separate organizational and substantive frameworks of the two groups, highlighting the differences between the Conventions and the involvement of experts from different governmental institutions, including anti-corruption authorities.

VII. Conclusions and recommendations

43. [...]. The expert meeting invited States parties to further assist each other in the investigation and prosecution of corruption cases by pursuing the effective use and implementation of the United Nations Convention against Corruption as a legal basis for international cooperation.

44. The meeting recommended that States parties to the Convention continue to explore further opportunities to broaden the range of legal bases that they can rely on for law enforcement and judicial cooperation in criminal matters, including the possibility of concluding bilateral and multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance international cooperation in criminal matters under chapter IV of the Convention.

45. The meeting recommended the organization of regular meetings for central or other competent authorities of States parties and signatories to the Convention, under the aegis of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, to facilitate the exchange of experience and information for better implementation of chapter IV of the Convention.

46. The experts encouraged the further use and expansion of existing networks of cooperation and their secure communication systems. The experts also considered that the possibility of creating on a secure website a virtual network of contact persons from central or other competent authorities could be explored further as an

innovative way of holding informal consultations prior to the formal submission of requests for international cooperation.

47. The meeting stressed the need to ensure that requirements on the part of the requesting State to keep mutual legal assistance requests confidential were respected by the requested State, to the extent possible, with a view to ensuring the efficiency and effectiveness of related investigations.

48. The meeting encouraged the national authorities of States parties to the Convention to assist each other, as well as to engage in international cooperation, where appropriate and consistent with their domestic legal systems, in investigations of and proceedings in civil and administrative matters relating to corruption, in accordance with article 43, paragraph 1, of the Convention.

49. The meeting recommended that the secretariat continue to compile information from States parties on international cooperation in civil and administrative proceedings for the detection of corruption offences, with a view to presenting a report on this issue during the sixth session of the Conference of the States Parties, as mandated by the Conference in its resolution 5/1, and recommended that tools that facilitate the compilation and analysis of such information, including the template presented in conference room paper CAC/COSP/IRG/2014/CRP.5, be used in this regard.

50. The meeting invited States parties to continue their efforts to build and promote flexible and efficient schemes of international cooperation for purposes of confiscation by, inter alia, developing or reviewing domestic legislation or practice to enable greater flexibility in dealing with tracing, freezing and confiscation requests, including requests for the enforcement of foreign orders and judgements, as well as non-conviction-based asset confiscation.

51. The meeting recommended that States parties to the Convention put in place or strengthen information systems and databases compiling statistical information on international cooperation cases, with a view to facilitating the monitoring of such cases and the gathering of information on the nature of the assistance requested or provided, the legal basis for the provision of such assistance, the classification of requests according to the offences in question and the time needed for the execution of the requests.

52. The meeting encouraged States parties to enhance the efficiency of law enforcement cooperation mechanisms by, inter alia, developing effective systems of information-sharing, establishing channels of communication between their relevant authorities and, if needed, concluding arrangements to foster operational assistance.

53. The meeting considered the following measures, among others, to be effective in facilitating successful international cooperation:

(a) The early communication and sharing of information before the submission of formal requests and subsequent consultations between the relevant authorities;

(b) The availability of clear guidance on the requirements set forth in the domestic legislation of the requested State for the execution of requests;

(c) Case coordination meetings between requested and requesting States;

(d) The exchange of experts and the assignment of liaison magistrates or liaison officers.

54. The meeting underlined the importance of further efforts to enhance the operational capacity of central or other competent authorities involved in international cooperation in criminal matters, including their specialized knowledge on financial crimes and corruption, with a view to strengthening their efficiency in dealing with requests and challenges encountered.

55. The meeting invited States parties to the Convention to consider the establishment of specialized units in prosecutorial and investigative authorities to deal with financial crimes and corruption in relation to both domestic investigations and international cooperation.

56. The meeting recommended that the secretariat continue to provide advisory services and technical assistance to respond effectively to the needs of States parties in fully implementing chapter IV of the Convention, on the basis of challenges and deficiencies identified through the Mechanism for the Review of Implementation and/or as a follow-up to requests of national authorities.

57. The meeting recommended that the dual criminality requirement be interpreted in a flexible manner to remove obstacles arising from the legal denomination or classification of the offence in question and, in some cases, its interpretation by the competent authorities involved.

58. The meeting requested the secretariat to study further the scope of application of the principle of dual criminality in considering requests for mutual legal assistance in cases involving legal persons and to prepare a report on this topic for submission to the Conference of the States Parties to the Convention at its sixth session, building on, *inter alia*, the background document entitled "Progress report on implementing the mandates of the expert group on international cooperation" (CAC/COSP/EG.1/2013/2).

59. The meeting recommended that States parties to the Convention consider establishing a central registry that includes information on the identification of current account holders and financial institution customers, where appropriate and consistent with their domestic legal systems.

60. The meeting recommended that States parties to the Convention share information at the fourth expert meeting on international cooperation concerning ways to best identify beneficial owners of legal persons.

VIII. Adoption of the report

61. On 10 October 2014, the expert meeting adopted the report on its third meeting (CAC/COSP/EG.1/2014/L.1).