



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

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International cooperation

Azerbaijan, Brazil, Chile, Guatemala and Paraguay: revised draft resolution

Enhancing the use of civil and administrative proceedings against corruption, including through international cooperation, in the framework of the United Nations Convention against Corruption

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

Aware that the United Nations Convention against Corruption¹ also provides for the use of civil and administrative proceedings as means of fighting corruption and recovering assets, where appropriate and consistent with domestic legal systems,

Bearing in mind that international cooperation is one of the principal means for States parties to the Convention to provide each other with the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention,

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

Recalling also article 53 of the Convention, according to which each State party shall, in accordance with its domestic law, take such measures as may be necessary to permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention, to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State party that has been harmed by such offences, and to permit its courts or competent authorities, when having to

¹ United Nations, *Treaty Series*, vol. 2349, No. 42146.



decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention,

Recalling further that the Convention, in its article 26, indicates that, subject to the legal principles of the State party, the liability of legal persons may be criminal, civil or administrative and obliges States parties to ensure that legal persons held liable in accordance with that article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions,

Recalling article 46, paragraph 2, of the Convention, according to which mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of the Convention in the requesting State party,

Acknowledging the crucial importance of technical assistance to building institutional and human capacity in States parties in order to facilitate the implementation of the provisions of the Convention through efficient international cooperation,

Recalling its resolutions 5/1 and 5/3 of 29 November 2013, in which it encouraged States parties to the Convention 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, and taking note with appreciation of the reports prepared by the Secretariat on the progress made in the implementation of those recommendations,²

Welcoming the conclusions and recommendations of the third meeting of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 9 and 10 October 2014,³ which encouraged the national authorities of States parties 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,

Welcoming also the conclusions and recommendations of the Open-ended Intergovernmental Working Group on Asset Recovery at its eighth meeting, held in Vienna on 11 and 12 September 2014,⁴ which observed that States parties, consistent with their domestic legal systems, may wish to consider allowing parallel criminal and civil proceedings or strengthening, as appropriate, the position of civil plaintiffs in criminal proceedings, and also encouraged States parties to consider bases for providing one another free legal advice in civil proceedings or assisting each other in legal representation,

Recalling the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic

² CAC/COSP/EG.1/2014/2 and CAC/COSP/EG.1/2015/2.

³ CAC/COSP/EG.1/2014/3.

⁴ CAC/COSP/WG.2/2014/4.

Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation⁵ of 2015, in which States expressed their intention to commit themselves to exploring ways of affording one another international cooperation in civil and administrative proceedings for confiscation purposes,

Recognizing that States parties continue to face challenges in recovering assets when making use of civil and administrative proceedings against corruption, including through international cooperation, owing in part to differences between legal systems, the complexity of multijurisdictional investigations and prosecutions, the limited implementation of effective domestic tools such as non-conviction-based forfeiture and other administrative or civil proceedings leading to confiscation, and the lack of familiarity with the mutual legal assistance proceedings of other States,

Noting with appreciation the ongoing efforts by regional organizations and forums to strengthen cooperation in combating corruption through the use of civil and administrative proceedings relating to corruption,

1. *Urges* Member States, where appropriate and consistent with their national legal systems, to provide each other with the widest possible assistance in investigations of and proceedings in civil and administrative matters relating to corruption offences, committed by natural or legal persons, including, if appropriate, through mutual legal assistance, for the detection of corruption offences, the identification, freezing and confiscation of assets, and the other purposes established in article 46, paragraph 3, of the Convention;

2. *Calls upon* States parties, in accordance with its domestic law, to effectively implement article 53, subparagraph (a), of the Convention by taking the necessary measures to permit another State party to initiate civil action in their courts to establish title to or ownership of property acquired through the commission of corruption offences, committed by natural or legal persons;

3. *Also calls upon* States parties, in accordance with their domestic law, to effectively implement article 53, subparagraphs (b) and (c), of the Convention by taking the necessary measures to permit their courts to recognize another State party's civil claim for payment of compensation or damages caused by corruption offences and for ownership of confiscated property acquired through the commission of such offences, committed by natural or legal persons;

4. *Invites* States parties, when taking measures to effectively implement article 53 of the Convention, in accordance with domestic law, to consider allowing other States parties to act on behalf of their political subdivisions, constituent federal units, organs, agencies, instrumentalities or other entities;

5. *Welcomes* the conclusions and recommendations contained in the report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 11 and 12 September 2014,³ and encourages States parties to consider, when feasible and consistent with their domestic legal system, providing free legal advice and legal representation to another State party that initiates civil actions or intervenes in criminal proceedings in their courts to establish payment of compensation or damages or to establish ownership of confiscated property acquired through the commission of corruption offences;

⁵ Economic and Social Council resolution 2015/19, annex.

6. *Encourages* States parties, as may be necessary, to consider the possibility of concluding multilateral, regional or bilateral treaties, agreements or arrangements on civil and administrative matters relating to corruption, including international cooperation, in order to promote the legal basis for granting mutual legal assistance requests concerning natural or legal persons in a timely and effective manner;

7. *Invites* Member States to continue to provide to the Secretariat information on civil and administrative proceedings relating to corruption, when feasible, and on a voluntary basis, in order to identify the scope of assistance that could be provided in relation to such proceedings, as well as to inform on good practices and tools relevant to the implementation of article 53 of the Convention, and requests the Secretariat to collect and disseminate such information by, inter alia, reporting to the Conference and its relevant subsidiary bodies, including suggestions regarding technical assistance needs and mechanisms to provide such assistance, as well as developing a study to identify best practices and ways to facilitate cooperation on the matter, subject to the availability of resources;

8. *Calls upon* Member States to inform the Secretariat 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, and requests the Secretariat to collect and make such information available to all States parties, and to report on the matter to the Conference and its relevant subsidiary bodies;

9. *Invites* Member States to work with the Secretariat and other international anti-corruption organizations, donors and assistance providers, as appropriate, to promote bilateral, regional and international activities to strengthen the use of civil and administrative proceedings against corruption, including workshops for the exchange and dissemination of relevant experiences and good practices;

10. *Invites* States and other donors to provide extrabudgetary resources for the purposes identified in the present resolution, in accordance with the rules and procedures of the United Nations.