



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

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Item 5 of the provisional agenda\*

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

## Implementation of resolution 1/7 of the Conference of the States Parties to the United Nations Convention against Corruption

**Note by the Secretariat**

### I. Introduction

1. During the negotiation of the United Nations Convention against Corruption, the United Nations Office on Drugs and Crime (UNODC), the Office of Internal Oversight Services of the Secretariat and the Office of Legal Affairs of the Secretariat, submitted a joint proposal to address matters in the Convention associated with bribery of international civil servants. The proposal did not muster a consensus and criminalization of passive bribery remained a non-mandatory offence.<sup>1</sup>

2. The initiative, however, led to the inclusion of a paragraph in resolution 58/4 of 31 October 2003, by which the General Assembly adopted the Convention, requesting the Conference of the States Parties to the United Nations Convention against Corruption to consider the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, jurisdiction and the role of international organizations.

3. In its resolution 1/7 entitled “Consideration of bribery of officials of public international organizations”, the Conference requested the Secretariat to organize an

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\* CAC/COSP/2008/1.

<sup>1</sup> For more detailed information on the discussions held during the negotiation process, see the note by the Secretariat on the question of bribery of officials of public international organizations (CAC/COSP/2006/8).



open-ended dialogue among international organizations and interested States parties on the issues of criminalization of bribery of officials of public international organizations, privileges and immunities, jurisdiction and the role of international organizations, and to report to the Conference at its second session. The Conference also encouraged States parties, when appropriate and consistent with their principles of jurisdiction, to criminalize the offences set forth in article 16 of the Convention. Furthermore, States parties expressed their commitment, in their capacity as States members of public international organizations, to align the financial and other public integrity rules of those organizations to the principles of the Convention and to use their voices in the organizations in which they participated to achieve that end.

**A. The external dimension: criminalization of bribery of officials of public international organizations, privileges and immunities, jurisdiction and the role of international organizations**

4. The original joint proposal of UNODC, the Office of Internal Oversight Services and the Office of Legal Affairs suggested making it mandatory for States parties to criminalize passive bribery of officials of public international organizations. The Convention criminalizes as mandatory offences the “promise, offering or giving” of a bribe to both foreign public officials and officials of public international organizations (art. 16, para. 1), while criminalization of passive bribery, that is the “solicitation or acceptance” of a bribe, is mandatory when the culprit is a national public official but is optional when the culprit is a foreign public official or an official of a public international organization (art. 15, subpara. (b), and art. 16, para. 2). While the lack of criminalization of passive bribery of foreign public officials could be remedied through the existence of the mandatory provision of the Convention to criminalize active and passive bribery of public officials, the same would not apply to officials of international organizations.

5. Consideration of corruption in international organizations also requires careful reflection on the issue of privileges and immunities, in line with the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)) and the Convention on the Privileges and Immunities of the Specialized Agencies (Assembly resolution 179 (II)), in particular issues related to conditions and requirements for the waiver of such immunities. During the meetings of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, several delegations drew attention to the fact that the formulation of a mandatory provision on the passive bribery of officials of public international organizations could create unintended and unwanted conflicts with existing international legal instruments governing privileges and immunities. It was therefore agreed that the *travaux préparatoires* of the negotiations would indicate that article 16 was not intended to affect any immunities that foreign public officials or officials of public international organizations might enjoy in accordance with international law.<sup>2</sup> Furthermore, the *travaux préparatoires* would indicate that delegations negotiating the Convention considered it quite important that any State party that had not established this

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<sup>2</sup> A/58/422/Add.1, para. 23.

offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of the offence by a State party that had established it in accordance with the Convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice.<sup>3</sup>

6. Other concerns expressed by some delegations referred to the fact that the criminalization of passive bribery of officials of public international organizations could potentially expand jurisdiction beyond that based on the principle of territoriality, thus permitting extraterritorial jurisdiction.<sup>4</sup>

7. Another issue is the role of international organizations. In cases of criminal or internal investigations for cases of corruption alleged to have been committed by officials of public international organizations, international organizations and States face the challenge of cooperating effectively. The Convention does not address that issue, but dealing with corruption in international organizations may involve situations in which an investigation by an international organization depends on information or evidence held by a Member State and vice versa. This raises the issue of the feasibility of mutual legal assistance among international organizations and between international organizations and Member States.

8. The issue of asset recovery is closely related to the question of effective international cooperation. As the United Nations is increasingly engaging in technical cooperation assistance and donors are increasingly delegating to multilateral organizations development assistance funds in support of technical assistance or other project related activities, it becomes increasingly important to public international organizations and their member States that organizations should be able to recover any of their funds or other property lost through corruption. The original joint proposal of the Office of Internal Oversight Services, the Office of Legal Affairs and UNODC made extensive reference to the issue and suggested that the Convention should include language that would allow public international organizations to make requests directly to States parties for return of assets.

## **B. The internal dimension: addressing corruption within public international organizations**

9. In order to address corruption and other forms of misconduct of officials of public international organizations, organizations must have appropriate internal regulations and rules.

10. The Convention is an international legal instrument which, by its nature, was developed by and is applied to States. It does not apply to intergovernmental bodies like the United Nations. The United Nations, including its specialized agencies, funds and programmes, are governed by internal financial and administrative regulations and rules. These regulations and rules provide the organizations with the framework to cope with all organizational, administrative, financial and staff matters related to their activities and also to address possible cases of misconduct.

<sup>3</sup> Ibid., para. 26.

<sup>4</sup> A/AC.261/3/Rev.2, footnote 114.

11. The conditions of service of international civil servants are furthermore regulated by the International Civil Service Commission, which has established common standards of service throughout the entire United Nations system. The status, basic rights and duties of United Nations staff members are set forth in the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies and the Staff Regulations of the United Nations. Complementary to these are other instruments, such as the “Standards of conduct for the international civil service” produced by the International Civil Service Commission. Some organizations have ethics manuals and other instruments to deal in a preventive and coercive manner with possible cases of corruption of their staff members. This non-exhaustive list of instruments provides a glimpse of the existing rules and regulations that govern international organizations. Moreover, the United Nations system is currently engaged in a deeper effort to reform its internal system for the administration of justice and most agencies, funds and programmes are reviewing and upgrading their internal regulations and rules on a regular basis, so as to address issues of misconduct in a more comprehensive way.

12. Addressing corruption in public international organizations remains a difficult challenge, owing to gaps in existing regulations and the limited capacity of the internal systems for administration of justice to enforce measures, undertake in-depth investigations and access external financial accounts. The possibility for international organizations to cooperate among themselves, to cooperate with each other or to seek assistance from member States in internal or criminal investigations is limited, while the recovery of assets emerges as even more challenging.

13. The Convention not only provides a comprehensive and solid framework for Member States to prevent and combat corruption effectively and to cooperate among each other efficiently, but it also represents a yardstick against which internal regulations and rules of international organizations could be reviewed and compared. The Convention embodies a state-of-the-art set of standards and principles that are also relevant to international organizations and to their regulations and rules.

14. An internal review of the regulations and rules of the United Nations may prove a useful exercise to assess whether its regulatory framework is in line with the principles and provisions of the Convention. As a result, organizations may consider reviewing or upgrading some of these rules, in order to deal with possible cases of misconduct properly and to reach the state-of-the-art of the Convention.

### **C. Two-pronged approach**

15. UNODC approached the implementation of resolution 1/7 of the Conference in two ways. On 12 March 2007, the Secretariat officially approached States parties to the Convention and international organizations, seeking their views on the issues captured in the resolution and their interest in participating in an open-ended dialogue. A total of 32 countries and 18 international organizations replied,<sup>5</sup>

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<sup>5</sup> States parties: Algeria, Argentina, Austria, Belarus, Belgium, China, Côte d’Ivoire, Dominican Republic, Ecuador, Egypt, Finland, France, Germany, Greece, Guatemala, Indonesia, Italy, Japan, Latvia, the former Yugoslav Republic of Macedonia, Madagascar, Mauritius, Namibia,

expressing interest and encouraging the implementation of resolution 1/7. A meeting was convened in Vienna on 27 September 2007 attended by States and organizations, to continue the mandated open-ended dialogue.

16. In parallel to this, UNODC presented in April 2007 a proposal to the members of the United Nations System Chief Executives Board for Coordination (CEB), to undertake a system-wide institutional integrity initiative to extend the principles and standards of the Convention to the organizations of the United Nations system. The Board endorsed the recommendation of the High-level Committee on Programmes that the High-level Committee on Management and its relevant networks should be actively engaged in pursuing the matter with UNODC. Members of the Board were requested to appoint two representatives each to undertake a review of internal rules and regulations against the standards of the Convention. An overview of the relevant principles of the Convention was provided to guide the organizations in this process, along with a suggested timetable for action. On 28 September, a meeting was organized in Vienna with designated representatives of members of CEB, to share and compare results on the initial work undertaken in pursuance of this voluntary consultative process to review internal rules and regulations.

## **II. Open-ended dialogue on criminalization of bribery of international public officials, privileges and immunities, jurisdiction and the role of international organizations**

17. A meeting to conduct the open-ended dialogue among States and organizations was held in Vienna on 27 September 2007.<sup>6</sup>

18. The following States parties to the Convention were represented at the meeting: Algeria, Argentina, Australia, Austria, Bangladesh, Belarus, Bolivia, Brazil, Canada, China, Croatia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Guatemala, Honduras, Indonesia, Jordan, Latvia, Mexico, Morocco, Namibia, Nicaragua, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Russian Federation, South Africa, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen and Zimbabwe.

19. The following States signatories to the Convention participated in the meeting: Belgium, Côte d'Ivoire, Germany, Iran (Islamic Republic of), Italy, Japan, Switzerland and Ukraine.

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Netherlands, Nigeria, Norway, Pakistan, Poland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay. International organizations: Asian Development Bank, Association of Southeast Asian Nations, European Commission, Caribbean Community Secretariat, Commonwealth Secretariat, Council of Europe, Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Eurojust, European Police Office (Europol), Food and Agriculture Organization of the United Nations (FAO), Inter-American Development Bank, International Atomic Energy Agency (IAEA), International Committee of the Red Cross (ICRC), International Labour Organization (ILO), Organization for Economic Cooperation and Development (OECD), Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, World Intellectual Property Organization (WIPO), World Bank and World Trade Organization.

<sup>6</sup> A more detailed summary of the discussion has been circulated to Member States and is available, upon request, in English from the Secretariat.

20. The following Secretariat units and organizations of the United Nations system were represented: International Fund for Agricultural Development (IFAD), International Labour Organization (ILO), International Maritime Organization (IMO), Office of Internal Oversight Services, Office of Legal Affairs, United Nations Industrial Development Organization (UNIDO), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and World Food Programme (WFP).

21. The following intergovernmental organizations were also represented at the meeting: Council of Europe, European Commission, Eurojust, Inter-American Development Bank, Interpol, Organization for Economic Cooperation and Development (OECD), Organization for Security and Cooperation in Europe (OSCE), Sovereign Military Order of Malta, Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies and World Customs Organization.

22. Participants welcomed the open-ended dialogue and stressed the growing importance of addressing corruption in international organizations as a matter of priority, in particular considering its impact on development. Some States considered that the criminalization of bribery of officials of public international organizations should be the starting point for promoting greater cooperation between international organizations and States.

23. Most delegations expressed the need to have more information and data from international organizations on actual cases and requested the organizations present at the meeting to provide first-hand information on the number of alleged cases of misconduct, the number of waivers of immunity and the outcome of those cases. Some organizations pointed out that even though gathering data was useful, it might lead to misperceptions as to the gravity of the situation and quantitative analysis therefore had to be accompanied by qualitative analysis.

24. Other organizations described how they addressed cases of alleged misconduct, including recent initiatives to promote integrity and prevent corruption (such as establishment of an ethics office, adoption of codes of conduct, issuance of rules on outside activities and employment of relatives, updated directives on procurement procedures, training activities on ethics and fraud awareness and detection). Some organizations provided first-hand information on a number of cases of alleged misconduct reported annually to the Office of Internal Oversight Services.

25. According to information provided by the Office of Internal Oversight Services, field-related work and procurement appeared as the most vulnerable areas at risk for corruption, with almost 95 per cent of the investigations carried out by the Office addressing cases that occurred in the field, most of which related to procurement. An average of 350 cases of alleged misconduct were reported each year to the Office, 30 per cent of which were related to corruption. Out of these, 5 to 10 cases went to prosecution.

26. The representative of the European Commission reported that the Commission had investigated about 200 allegations in 2006, out of which 43 cases of corruption were opened, 5 of which were handed over to national authorities for criminal prosecution, with an indication that a waiver of immunity needed to be requested. The representative stated that the Commission had an established practice of cooperation with Member States for cases of misconduct.

## **A. Criminalization of passive bribery of officials of international public organizations**

27. Delegations were generally favourably disposed towards criminalization of passive bribery of officials of public international organizations. Several States reported that their national legislation criminalized both forms of bribery and, highlighting the deterrent effect of criminalization, suggested that other countries should seriously consider doing so as well. The Charter of the United Nations, which prescribed that United Nations staff members must conform to the highest standards of professionalism and integrity, was recalled. Some participants stressed that the establishment of an offence of passive bribery in national criminal laws would have a positive effect on the exchange of information between national authorities and international organizations in corruption investigations. One speaker emphasized that the offence was useful only if States were committed to investigating and enforcing it, otherwise the apparent impunity could have a detrimental effect. One speaker expressed the view that a number of open questions still remained.

28. The representative of the Office of Internal Oversight Services described the role of his office in investigating alleged cases of criminal misconduct and stressed in particular its function to assist Member States in criminal prosecutions. Often, investigations were carried out taking into account national legislation. The existence of different national laws and legal systems made this task difficult for the United Nations. A harmonized provision on passive bribery would in this respect ease the task of the Organization and raise also the interest of national prosecutors to receive such cases and pursue them.

## **B. Issues related to privileges and immunities**

29. Some delegates indicated that national prosecution authorities were reluctant to take on cases of alleged corruption from internal investigative bodies, or would refrain from requesting a waiver of immunity, in part because of a lack of knowledge about the extent and limitations of privileges and immunities. Similarly, several organizations confirmed the low number of incoming requests for such waivers. Some delegations stressed the need for national prosecutors to be given clear guidance on how to proceed with a request for a waiver of immunity.

30. Several organizations and States described their legal system and referred in particular to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, as their legal basis for dealing with such issues. Organizations described the regime in place to seek cooperation among States and organizations and the remedies available in case consultations should fail. It was underscored that privileges and immunities were granted to organizations and not to individuals, and that international organizations were empowered to waive such immunities when the organization was of the opinion that doing so would not impair the independence of its functions and it would be in the interest of the organization. Several organizations stressed that decisions on waivers should be made by the head of the organization; this was considered crucial for the independence of the organization.

31. In appropriate cases, the host country agreement between the organization and the host State needed to be taken into account. One delegation stressed that organizations could envisage partial waivers of immunity, such as from jurisdiction only, for the purpose of allowing national authorities to undertake specific actions in connection with an investigation.

### **C. Issues related to the question of jurisdiction and to the role of international organizations**

32. Participants discussed challenges related to criminal investigations faced by investigative bodies of international organizations. Attention was paid in particular to the problems that could arise when international organizations wished to share information with national authorities. One speaker stressed that the information collected by international organizations was mainly for internal purposes and might not be valuable for criminal proceedings, while several delegations highlighted the limited scope of internal investigations and the limited access of internal investigators to financial information. Without such evidence, it was often difficult for national jurisdictions to take over and further prosecute such cases.

33. Several delegations stressed the importance of protecting the rights of the staff, such as the right to remain silent. The importance of cooperation and establishment of partnerships with national authorities was stressed throughout the meeting by both States and organizations. Several participants emphasized the role of host country agreements for cooperation. One delegation suggested collecting the experience of countries that hosted international organizations, while another delegation stressed the need to establish a reciprocal approach in cooperation, so that not only should international organizations assist the community, but also the community should provide information or evidence to international organizations.

## **III. Institutional integrity initiative**

34. Members of CEB met in Vienna on 28 September 2007 to review the results of the consultative process to review internal rules and regulations (see also para. 16 above).

35. The following members of CEB, units of the Secretariat and other international organizations were present at the meeting: International Atomic Energy Agency (IAEA), IFAD, ILO, IMO, International Telecommunication Union (ITU), Office of Internal Oversight Services, Office of Legal Affairs, United Nations Environment Programme (UNEP), United Nations Human Settlements Programme (UN-Habitat), UNIDO, United Nations Office at Vienna, UNRWA, Universal Postal Union (UPU) and WFP.

36. The following international organizations had sent written comments: Office of Legal Affairs, IFAD, ILO, ITU, United Nations Development Programme (UNDP), UN-Habitat and UPU.

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



## **A. Outcome of the preliminary review of internal regulations and rules of international organizations**

38. At the meeting, the Secretariat provided additional background concerning the two-pronged approach adopted by UNODC to implement resolution 1/7 of the Conference and briefed participants on the positive results of the meeting held as part of the open-ended dialogue on passive bribery of officials of public international organizations and related issues, on 27 September 2007. It was noted that the two meetings – the open-ended dialogue and the meeting organized within the framework of CEB – were unique and represented the only opportunity to develop such an open dialogue. That dialogue should therefore be strengthened and built upon as much as possible.

### **1. Outcome of the first review of internal regulations and rules of the United Nations against the principles of the United Nations Convention against Corruption.**

39. Participants welcomed the opportunity to address internal regulations and rules in the light of the self-assessment checklist prepared by UNODC, which was considered a useful tool to initiate the review. Participants agreed on the aim of the exercise, which was to go through the checklist and identify what measures were in place and what issues were of greater concern to organizations. As a final result, participants concurred that the exercise might lead to amendments of rules or to a greater degree of convergence of such rules among different organizations. However, its primary function was not to engage in a harmonization exercise, as regulations and rules often reflected the different scope, mandate and governance structures of organizations.

#### **(a) Chapter I: definitions**

40. The definition of “official of an international organization” and the designation of “staff member” were discussed. The intention that the Convention should have a broad scope of application was stressed in the light of practical implications, especially as related to the status and contractual situation of persons working for the United Nations and their involvement in managerial and financial responsibilities. Participants noted that significant differences still existed in the policies and practices of different organizations of the United Nations system regarding staff functions and the related contractual status of individuals. It was also pointed out that such differences might be addressed in the context of the ongoing reform of the internal justice system of the United Nations for bodies using the United Nations Administrative Tribunal.

41. Participants agreed on the complexity of the issue and the need to ensure that all persons working or acting for or on behalf of the United Nations should be held accountable for acts of corruption, regardless of their formal contractual status, especially considering that to the outside world they were all seen as one.

#### **(b) Chapter II: preventive measures**

42. A large part of the discussions were devoted to the chapter of the Convention on preventive measures and the relevance of the Convention for international

organizations. Most organizations reported having a policy of zero tolerance for corruption, even though most also acknowledged that they did not have a specific anti-corruption policy in place. In such cases, the issue of preventing corruption would be partially covered by the general policies on misconduct or fraud prevention. In most cases, the existing internal investigative bodies, among others, also fulfilled the functions of an anti-corruption body, although often limited in size and human capacity. Only very few organizations reported having independent investigative bodies charged also with prevention of and development of knowledge concerning corruption.

43. The link between prevention of corruption and human resource policies was clearly recognized. There was a consensus that prevention of corruption began with awareness and training and that recruitment policies and practices were especially relevant. Many organizations provided examples of anti-corruption measures they had taken, ranging from the establishment of a hotline to report cases of misconduct, to the protection of whistleblowers, to the development of training tools and modules in the areas of procurement and integrity.

44. Education through awareness and training were considered by all participants as key elements in efforts to prevent corruption and promote integrity. Examples such as the integrity awareness online training of the Secretariat and other activities were discussed. Some organizations reported having a standard procedure to train staff in charge of project management in the field. Participants discussed also the possibility of sharing training modules and experience. Existing facilities, such as the campus of the International Training Centre of ILO, were considered useful to promote joint activities. In that context, a proposal was made to organize a round-table discussion in the margins of the second session of the Conference of the States Parties to the United Nations Convention against Corruption, involving the representatives of members of CEB, other interested organizations and Member States, to address specific issues of recruitment, training and corruption prevention.

45. Participants also addressed the need for a review of human resource policies, including codes of conduct, rules concerning conflict of interest, and the issue of financial disclosure of assets of staff members. In that regard, the group acknowledged that a lot of initiatives seemed to be in place in organizations to address different aspects and to fill existing gaps, such as the UNODC online tool to report gifts and awards and other United Nations system-wide tools such as the “Standards of conduct for the international civil service”, which had been revised and updated in 2001. Participants also noted that some major discrepancies existed. The importance of responding to the expectations of staff that disciplinary sanctions will be applied in cases of misconduct was underlined. Participants stressed the relevance of having transparent recruitment procedures in place, based on merit at all levels. The importance and concrete benefits of adequate checks on individuals were also discussed.

46. Concerning financial disclosure, participants agreed that the policy regarding use of relevant information and regular checks had to be clear. The procedures of the United Nations Secretariat were considered cumbersome, especially for smaller entities. Financial disclosure alone, without having additional effective preventive measures in place, was not considered a panacea. Other participants stressed that despite the existence of a robust infrastructure of instruments and rules, it was important to look for loopholes and close them appropriately. The financial

disclosure rule was considered by some to be more a guidance tool for staff than an investigative tool to detect corruption.

47. Along the same lines, procurement policies and public access to information were discussed. Several organizations reported that they were developing procurement policies and raised in that regard the issues of capability and resources of organizations to detect and investigate procurement fraud. The work of the Procurement Task Force of the Office of Internal Oversight Services was mentioned. It was found that threshold amounts for procurement authority differed among organizations. One organization reported on difficulties encountered in the selection of implementing partners for technical assistance, which was often a gap in the United Nations rules. It was suggested that one possible follow-up action would be to add anti-corruption clauses to contracts with private contractors, in line with the tenth principle (on anti-corruption) of the Global Compact.

48. In connection with public access to information, there was a common understanding that most rules and regulations were publicly available, but they were often dispersed and difficult to access. The participants discussed ways to facilitate public access and the possibility of undertaking an exercise to collect information and make it available on a joint website.

49. On the issues of the integrity of administration of justice and investigation services, discussions included the relevance of ensuring the independence of such bodies, including the newly established Ethics Office of the Secretariat. Reference was made to the current reform of the internal system for the administration of justice in the United Nations. In addition to the specific reference to the integrity of judges, tribunals and tribunal-like entities existing within the United Nations family, mention was made of the internal review bodies and administrative panels, whose functions were carried out by staff who volunteered for the additional work, but did not receive any specific training to carry out the functions. This was considered an indispensable element to ensure their integrity. Mention was also made of the existence of guidelines for investigations, which also included the conduct of investigators.

**(c) Chapter III: criminalization and law enforcement**

50. With reference to the chapter of the Convention on criminalization and law enforcement, consideration was given to the opportunity to establish the Convention offences as violations of internal rules and regulations, subject to internal sanctions and disciplinary measures, that mirrored the provisions established in article 30 of the Convention. This included the provisions related to the protection of experts, victims, witnesses and whistleblowers, which, *mutatis mutandis*, could apply to the United Nations. A major concern expressed by most participants related to witness and whistleblower protection policies, where it was felt there seemed to be major gaps in the rules. In some instances, the very specific situation that was reported would make it easy to identify *de facto* the reporting person or the whistleblower. In such a case, the issue of protection from reprisals was particularly sensitive. The question on how to deal with anonymous communications was also discussed.

51. Attention was drawn to the importance of adequate provisions providing for consequences for acts of misconduct, such as disqualification or other forms of administrative sanction, and to look at levels of effectiveness in that regard. A

deeper analysis of what was in place and how sanctions were being applied was considered to be of relevance. In addition, the issue of the rights of the accused as opposed to the interests of the organization was raised and discussed.

**(d) Chapters IV and V: international cooperation and asset recovery**

52. Participants recognized the existence of complex issues, including legal issues, related to the possibilities for international cooperation between organizations and States and agreed on the importance of having a general framework for the purpose of carrying out criminal investigations. One member suggested concluding separate memorandums of understanding on criminal investigations with each host country.

53. Some participants stressed that a national jurisdiction would take over a criminal investigation only if the organization that reported the case provided some evidence, but that access to such evidence, especially of a financial nature, could very often be achieved only with the help of the national jurisdiction. The current experience of some organizations in initiating a civil action in a national jurisdiction to recover lost assets had not been very promising. It was considered that with regard to the issue of asset recovery, international organizations would certainly benefit from any new development at the level of national jurisdictions, in line with the Convention.

**(e) Status of international organizations**

54. Participants agreed that the United Nations Convention against Corruption did not amend or otherwise affect the validity of the system established by the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies. At the same time, most participants agreed on the importance of safeguarding the discretion of the heads of the various organizations for decisions related to the waiver of privileges and immunities, in order to protect the interests of the organizations.

**2. Suggested timetable and proposals for the review process**

55. Participants agreed to adopt a suggested timetable as an action plan for the internal review process, leading eventually to the adoption or amendment of rules.

56. Participants recognized the existence of some significant differences between the United Nations and the practice of some specialized agencies. While the many differences and special circumstances or mandates of organizations were acknowledged, there was also a common understanding that all belonged to one United Nations family and all were subject to the principles of the Charter of the United Nations and to the “Standards of conduct for the international civil service”. While some stressed the importance of respecting different practices, especially those of specialized agencies, most participants agreed with the explanation provided by the Secretariat that aligning rules to the standards of the United Nations Convention against Corruption did not mean aligning the wording used by organizations, although the exercise would, eventually, lead to some level of convergence. Participants agreed on that approach and were of the opinion that this was a unique opportunity to learn from each other.

57. Participants suggested that consideration should be given to organizing a side event at the next session of the Conference of the States Parties to continue the review work. The group also considered that gathering and comparing existing rules and provisions was useful and recommended that UNODC should explore the possibility of retaining a consultant to help advance the review process. Should that course of action become possible, information on regulations and rules would be gathered in a central web location, such as the web page of the Integrity Awareness Initiative.

58. The meeting was informed that the summary discussions would be circulated among all participants and that the results of the open-ended dialogue and the review process within the framework of CEB would be communicated to the Conference of the States Parties. The Executive Director of UNODC would brief CEB at its next session, in October, and report to CEB more formally at its subsequent meeting, in April, on progress.

#### **IV. Conclusions and recommendations**

59. The open-ended dialogue between States and organizations has demonstrated that the opportunity to exchange views had been lacking in the past. The dialogue helped to clear up a number of misunderstandings and to focus on issues of common concern. It also helped to identify areas where action might be required and to advance thinking among policymakers on what that action might be and how it could be taken.

60. Pursuant to the mandate given by the General Assembly in its resolution 58/4, the Conference encouraged States parties, when appropriate and consistent with their principles of jurisdiction, to criminalize the offences contained in article 16 of the Convention. The nature of article 16, paragraph 2, as a non-mandatory provision, however, is a factor that, by necessity, limits the extent of the action that the Conference could take beyond the encouragement it has already given to States. Consequently, the focus would shift to the other issues raised by the General Assembly in its resolution 58/4, namely jurisdiction, the question of privileges and immunities and the role of international organizations.

61. The question of jurisdiction, which was addressed in resolution 1/7, did not emerge during the open-ended dialogue as an overly complicated issue or as a source of concern. It appears that the issue is considered to be a rather technical one and that the question would be how to approach it when a country chooses to be bound by the discretionary provision of article 16, paragraph 2, of the Convention, so as not to inadvertently contravene established norms or principles. It is to be assumed that by providing the appropriate expertise and expert advice, if the issue forms part of a technical assistance exercise, potential problems regarding jurisdiction could be avoided.

62. Regarding privileges and immunities, the general view that emerged from both the open-ended dialogue and the discussions among international organizations, was that this complex issue was addressed in a satisfactory manner by existing international legal instruments, which enjoyed very wide adherence and consistent application. It might also be the case that delving into the broader question of privileges and immunities could lie in the fringes of the mandate and competence of

the Conference of the State Parties to the United Nations Convention against Corruption. The relevance of that point notwithstanding, there seems to be convergence of views that the existing regime of privileges and immunities is not a source of insurmountable difficulties when it comes to addressing bribery of officials of public international organizations. During the open-ended dialogue, the issues raised on the question of privileges and immunities related to the need for more practical and more easily accessible information on the application of the rules and the procedures that needed to be followed. Both of those items could be addressed through the production of technical notes and publications on procedures.

63. The question of the relationship between international organizations and Member States, especially in relation to international cooperation and exchange of information on ongoing investigations, seems to be a cause for concern that would require further consultation. International organizations often encounter difficulties in obtaining information and evidence required to advance internal investigations in cases of corruption. Those difficulties have been known to hamper such investigations, with a risk that impunity for the individuals involved would result. The matter is equally important when it comes to the need for asset recovery. That issue needs to be explored further, so that its full dimensions are understood, as a prerequisite for the identification of appropriate and feasible solutions.

64. The internal review of regulations and rules, started at the request of the Conference and on the invitation of UNODC, is producing encouraging initial results. The review is likely to lead to increased consistency and greater convergence of regulations and rules of international organizations, beginning with those that belong to the greater United Nations family. Significant additional work will be required and the support and active involvement of States, individually or collectively through the Conference, will add impetus to the ongoing efforts.

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