



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

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## Third session

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Agenda item 3

### Asset recovery

**Australia, Brazil, Canada, China, Indonesia, Nigeria, Norway, Philippines, Sierra Leone, Switzerland and United States of America: revised draft resolution**

### Asset recovery

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

*Bearing in mind* that the return of assets is one of the main objectives and a fundamental principle of the United Nations Convention against Corruption<sup>1</sup> and that States parties to the Convention are obligated to afford one another the widest measures of cooperation and assistance in that regard,

*Recalling* its resolutions 1/4 and 2/3, in which it established and continued the work of the Open-ended Intergovernmental Working Group on Asset Recovery, welcoming the conclusions and recommendations of the Working Group,<sup>2</sup> and noting with interest the background paper prepared by the Secretariat on the progress made on the implementation of those recommendations,<sup>3</sup>

*Acknowledging* the important progress made towards implementation of chapter V of the Convention, but recognizing that States parties continue to face challenges in asset recovery owing, inter alia, to differences in legal systems, the complexity of multi-jurisdictional investigations and prosecutions, lack of familiarity with mutual legal assistance procedures of other States and difficulties in identifying the flow of corruption proceeds, and noting the particular challenges posed in recovering the proceeds of corruption in cases involving individuals who are or have been entrusted with prominent public functions and their family members and close associates,

*Also acknowledging* the vital importance of ensuring the independence and effectiveness of authorities charged with investigating and prosecuting corruption

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<sup>1</sup> United Nations, Treaty Series, vol. 2349, No. 42146.

<sup>2</sup> CAC/COSP/WG.2/2009/3.

<sup>3</sup> CAC/COSP/2009/7.



offences and recovering the proceeds of such crimes, including by establishing the necessary legal framework and allocating the necessary resources,

*Concerned* about the difficulties, particularly practical difficulties, that both requested and requesting States face in asset recovery, taking into account the particular importance of the restitution of these assets for development,

*Calling on* all States parties, acting as both requested and requesting parties, to commit the political will to act together to recover the proceeds of corruption,

1. *Renews* the commitment of all States parties to the United Nations Convention against Corruption<sup>4</sup> to effective national action and international cooperation to recover the proceeds of corruption;

2. *Urges* States parties to take a proactive approach to international cooperation in asset recovery by making full use of the mechanisms provided in chapter V of the Convention, including by initiating requests for assistance, making spontaneous disclosures of information on proceeds of offences to other States parties and considering making requests for notifications, in accordance with article 52, paragraph 2 (b), of the Convention;

3. *Calls on* States parties to give particular and timely consideration to the execution of international mutual legal assistance requests and to ensure that competent authorities have adequate resources to execute requests;

4. *Calls on* all States parties that have not yet done so to promptly designate a central authority responsible for mutual legal assistance requests and to notify the Secretary-General of the designated central authority, as required by article 46, paragraph 13, of the Convention;

5. *Encourages* States parties to promote informal channels of communication, in particular prior to making formal requests for mutual legal assistance, by, inter alia, designating officials or institutions, as appropriate, with technical expertise in international cooperation in asset recovery as focal points to assist their counterparts in effectively meeting requirements for formal mutual legal assistance;

6. *Encourages* those focal points and other relevant experts to come together, at the regional level or according to theme, to promote communication, coordination and development of best practices, including by taking advantage of existing networks<sup>5</sup> to avoid duplication;

7. *Encourages* the further development of initiatives, such as those of the International Criminal Police Organization and similar regional institutions, to provide assistance in asset recovery case development at the request of States parties;

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<sup>4</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146.

<sup>5</sup> Including, but not limited to, the Camden Assets Recovery Inter-Agency Network, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States, the Lausanne process, the Red Iberoamericana de Cooperación Jurídica Internacional, the International Centre for Asset Recovery, the European Judicial Network, the Rede de Cooperação Jurídica e Judiciária Internacional dos Países de Língua Portuguesa, the Global Legal Information Network and other similar networks.

8. *Urges* States parties to ensure that procedures for international cooperation allow for the seizure and restraint of assets for a time period sufficient to preserve assets during the pendency of foreign proceedings, and to expand cooperation in the enforcement of foreign judgements, including through awareness-raising for judicial authorities;

9. *Also urges* States parties to strengthen the capacity of legislators, law enforcement officials, judges and prosecutors on matters relating to asset recovery, and to provide technical assistance in the fields of mutual legal assistance; confiscation matters, including criminal confiscations and, where appropriate, non-conviction-based forfeiture, in accordance with national legislation; and civil proceedings;

10. *Encourages* States parties to remove barriers to asset recovery, including, inter alia, by simplifying and preventing the abuse of their legal procedures;

11. *Also encourages* States parties to limit, where appropriate, domestic legal immunities, in accordance with their legal systems and constitutional principles;

12. *Further encourages* States parties to remove additional barriers to asset recovery by ensuring that financial institutions adopt and implement effective standards of customer due diligence and the identification of beneficial ownership and by establishing effective procedures for financial disclosure;

13. *Urges* further study and analysis of, inter alia, the results of asset recovery actions and, where appropriate, how legal presumptions, measures to shift the burden of proof and the examination of illicit enrichment frameworks could facilitate the recovery of corruption proceeds;

14. *Urges* States parties to document and disseminate successful asset recovery experience and to work in partnership with relevant international bodies to promote awareness of the positive development impact of asset recovery;

15. *Requests* the Working Group to consider the existing and developing body of studies for the development of best practices in asset recovery, including but not limited to, the studies of the Stolen Asset Recovery initiative;

16. *Urges* States parties to promote the use of modern information and communications technologies to expedite asset recovery operations;

17. *Decides* that the Working Group shall continue its work to advise and assist the Conference in the implementation of its mandate on the return of the proceeds of corruption and shall hold at least two meetings prior to the fourth session of the Conference, within existing resources;

18. *Requests* the Secretariat to assist, within existing resources, the Working Group in the performance of its functions, including by providing interpretation services in the six official languages of the United Nations.