

AG/RES. 2034 (XXXIV-O/04)

**FOLLOW-UP ON THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION AND ITS PROGRAM FOR COOPERATION**

(Adopted at the fourth plenary session, held on June 8, 2004)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4265/04 add. 3 corr. 1);

BEARING IN MIND the mandates contained in resolution AG/RES. 1943 (XXXIII-O/03), "Follow-up on the Inter-American Convention against Corruption and Its Program for Cooperation";

RECALLING that the Plan of Action of the Third Summit of the Americas, held in Quebec City, devotes a special chapter to the fight against corruption and that commitments are made therein on the Inter-American Convention against Corruption, the Inter-American Program for Cooperation in the Fight against Corruption, and the establishment of a follow-up mechanism for implementation of said Convention, as well as the strengthening of the Inter-American Network for Cooperation against Corruption, the strengthening of civil society participation in the respective states in the fight against corruption, and the adoption of policies, processes, and mechanisms to protect the public interest;

CONSIDERING the importance of the Inter-American Convention against Corruption and the fact that it has been ratified by 30 OAS member states and that 28 of them now participate in the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC), which means that the number of states parties to the Convention and participating in the MESICIC has, in each case, increased by one over the past year;

BEARING IN MIND that, in the Declaration on Security in the Americas, the states of the Hemisphere reaffirmed their commitment to the fight against both passive and active corruption, which constitutes a threat to their security; stated that cooperation, mutual legal assistance, extradition, and concerted action to combat corruption constituted a political and moral imperative; and pledged to strengthen the MESICIC;

RECALLING that the Heads of State and Government, in the Declaration of Nuevo León, recognized "that corruption and impunity weaken public and private institutions, erode social values, undermine the rule of law, and distort economies and the allocation of resources for development"; pledged, *inter alia*, to increase their "cooperation within the framework of the Inter-American Convention against Corruption, particularly by strengthening its follow-up mechanism"; and charged the Conference of

States Parties to the MESICIC with proposing “specific measures” to strengthen the mechanism;

RECALLING ALSO that, in the Declaration of Nuevo León, the Heads of State and Government expressed their concern regarding corrupt, illegal, and fraudulent practices in the management of some national and transnational enterprises, which could have a negative impact on economies, in particular those of developing countries and on their producers and consumers;

RECALLING FURTHER that, in the Declaration of Nuevo León, the Heads of State and Government also agreed to hold a meeting of the States Parties to the Inter-American Convention against Corruption, to take place in Managua, Nicaragua, in mid-2004;

WELCOMING the results of the First Conference of States Parties to the MESICIC and, in particular, the “Conclusions and Recommendations of Concrete Measures to Strengthen MESICIC” (SG/MESICIC/doc.103/04 rev. 6), which is appended to this resolution;

WELCOMING ALSO the work of the Committee of Experts of the MESICIC, since its inception, which is referred to in the report it presented to the Conference of States Parties to the MESICIC for consideration (SG/MESICIC/doc.95/04 rev. 4);

TAKING INTO ACCOUNT that the OAS General Secretariat has been performing the functions of the MESICIC secretariat and that, as part of the measures for implementation of the mandate issued in the Declaration of Nuevo León, the Conference of States Parties to the MESICIC recommended that the General Assembly adopt certain decisions in relation to the strengthening of the Technical Secretariat of the MESICIC and to its mission; and

WELCOMING the signing by numerous states of the Hemisphere of the United Nations Convention against Corruption, adopted in Mérida, Mexico, on December 9, 2003,

RESOLVES:

1. To urge those member states of the Organization that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Inter-American Convention against Corruption and to participate in the follow-up mechanism for its implementation.

2. Likewise, to encourage those member states of the Organization that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the United Nations Convention against Corruption, so that it may enter into force as soon as possible.

3. To urge the states parties to the Inter-American Convention against Corruption to take any measures they deem necessary to adjust their domestic legislation and comply with the commitments they undertook upon ratification of or accession to the Convention.

4. To urge the states parties to the Inter-American Convention against Corruption to improve, on the basis of the Convention and applicable laws and treaties, regional mechanisms for mutual legal assistance in criminal matters and to apply them, in order to respond to requests from authorities who, under their domestic law, are authorized to investigate or prosecute the acts of corruption described in the Convention, with a view to combating impunity.

5. To support the strengthening of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) and, in that connection:

- a. To express its satisfaction with the First Meeting of the Conference of States Parties to the MESICIC, held on April 1 and 2, 2004, in Washington, D.C.;
- b. To endorse the “Conclusions and Recommendations of Concrete Measures to Strengthen MESICIC (SG/MESICIC/doc.103/04 rev. 6), adopted at the First Meeting of the Conference of States Parties to the MESICIC;
- c. To express its satisfaction with the decision taken at that meeting to strengthen the Conference of States Parties to the MESICIC as a political forum for addressing topics of hemispheric cooperation against corruption, and with the decision to grant its Chair the power to follow up on the decisions of said Conference and report to the states parties when appropriate;
- d. To express its satisfaction with the work of the Committee of Experts of the MESICIC and, in particular, with the adoption of the reports, in the context of the first round, of Argentina, Paraguay, Colombia, Nicaragua, Uruguay, Panama, Ecuador, and Chile; and to urge the Committee to continue this process, taking into account the conclusions and recommendations adopted by the Conference of the States Parties;
- e. To request the Secretary General, in pursuit of the conclusions and recommendations of the First Meeting of the Conference of States Parties to the MESICIC and, in keeping with Article 113 of the Charter of the Organization of American States, to make the necessary arrangements so that the Technical Secretariat that has been supporting the MESICIC, funded by the Regular Fund, is

mainly tasked with rendering permanent services to that Mechanism within the Secretariat for Legal Affairs, ensuring that the other support services rendered by the Technical Secretariat for Legal Cooperation Mechanisms may continue in an efficient and uninterrupted manner;

- f. To request the General Secretariat to identify sources of internal OAS funding, such as the Regular Fund, and of external funding, such as international and regional financial institutions and official and other national agencies, to provide adequate funding for the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) and, when appropriate, for the full and effective implementation of its recommendations; and
- g. To express its satisfaction with the decision, taken at the First Meeting of the Conference of States Parties to the MESICIC, to accelerate the first round of the evaluation process.

6. To support the holding of a meeting of the states parties to the Inter-American Convention against Corruption, to take place in Managua, Nicaragua, on July 8 and 9, 2004, in accordance with the Declaration of Nuevo León, and, in relation to that meeting:

- a. To provide that the meeting shall be funded from resources available in subprogram 10W of the program-budget of the Regular Fund for 2004. Any additional expense, or expense not provided for in the Regular Fund, shall be covered by external funds or by the state hosting the meeting;
- b. To request the General Secretariat to render the necessary technical secretariat and administrative services for the preparation and holding of that meeting; and
- c. To instruct the Permanent Council and the Conference of the States Parties to the MESICIC to carry out appropriate follow-up of the results of the meeting of the states parties to the Convention, to be held in Managua, Nicaragua.

7. To request the General Secretariat to continue carrying out, in the execution of the Inter-American Program for Cooperation in the Fight against Corruption, technical cooperation activities to provide assistance in the signature or ratification of, or accession to, the Inter-American Convention against Corruption and in its implementation, and in the exchange of information and experiences among government authorities responsible for this area, including those of the Inter-American Network for Cooperation against Corruption.

8. To instruct the Permanent Council to follow up on this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources, and to present a report on its implementation to the General Assembly at its thirty-fifth regular session.

APPENDIX

SG/MESICIC/doc.103/04

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MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION (MESICIC)

First Meeting of the Conference of States Parties within the MESICIC framework

April 1 – 2, 2004

CONCLUSIONS AND RECOMMENDATIONS ON CONCRETE MEASURES TO STRENGTHEN MESICIC*

We, the States Parties to the Inter-American Convention against Corruption and members of the Follow-up Mechanism for its Implementation (MESICIC), meeting within the framework of our First Conference, pursuant to provision 5 of the *Report of Buenos Aires* at the headquarters of the Organization of American States on April 1-2, 2004, and taking in account:

That the Inter-American Convention against Corruption has as its objectives the promoting and strengthening the development of mechanisms needed to prevent, detect, punish, and eradicate corruption; and promoting, facilitating and regulating cooperation between States Parties;

That, in the Plan of Action of the Third Summit of the Americas, the Heads of State and Government decided to support “the establishment as soon as possible, taking into consideration the recommendation of OAS, of a mechanism for follow-up on the implementation of the Inter-American Convention against Corruption by States Parties to this instrument;”

That, in compliance with the above-mentioned mandate of the Third Summit of the Americas, on May 4, 2001, the States Parties approved the *Report of Buenos Aires*, which sets forth the purposes, principles and basic provisions on the organization and functioning of MESICIC, and ratified it by the declaration signed on June 4, 2001, on occasion of the thirty-first regular session of the General Assembly of the OAS held in San José, Costa Rica;

That the General Assembly of the OAS, by means of Resolutions 1784 (XXXI-O/01), 1785 (XXXI-O/01), 1870 (XXXII-O/02), and 1943 (XXXII-O/02), has recognized the importance of MESICIC and the progress achieved by its Committee of Experts;

That the *Report of Buenos Aires* provides that the functions of the Secretariat of the Mechanism will be exercised by the General Secretariat of the OAS; that the General Assembly of the Organization, by means of resolutions AG/RES. 1784 (XXXI-O/01), AG/RES. 1870 (XXXII-O/02), and AG/RES. 1943 (XXXIII-O/03), has requested the General Secretariat of the OAS to fulfill such functions, in accordance with the resources that are allocated in the program-budget and other resources; and that, in compliance with these mandates, the Secretary General of the OAS has taken the relevant administrative steps in conformity with the above-mentioned resources to provide these services for the Mechanism,

That, in the Declaration on Security in the Americas, approved in Mexico City on October 28, 2003, the States of the Western Hemisphere stated: “we reaffirm our commitment to the fight against both passive and active corruption, which constitutes a threat to the security of our States” and “we pledge to strengthen the Follow-up Mechanism of the Inter-American Convention against Corruption;”

That the Heads of State and Government, by means of the Declaration of Nuevo León approved at the Special Summit of the Americas held in Monterrey, Mexico on January 13, 2004, pledged to increase “cooperation within the framework of the Inter-American Convention against Corruption, particularly by strengthening its follow-up mechanism” and, regarding this, instructed this Conference of the States Parties of the Mechanism to prepare “specific measures to strengthen this mechanism;”

That the work done by the Committee of Experts of MESICIC, since it began functioning in January 2002, deserves recognition, and as mentioned in the report that it has submitted to us (Document SG/MESICIC/doc. 95/04 rev.4), “provides a concise summary of the Committee’s activities. At the same time, it provides evidence that the Americas want to control and eradicate corruption. We have to increase economic, financial and human resources and disseminate our work further and better; to do this, we hope the Technical Secretariat will have the means to fully conduct its work. This will help each nation to move ahead and address the call of citizens and public opinion to fight against corruption”; and

That, also, the recommendations that the Committee of Experts of MESICIC transmitted us in its report to facilitate compliance with the mandate contained in the “Declaration of Nuevo León” should be considered,

Hereby agree to the following:

I. STRENGTHENING AND MISSION OF THE TECHNICAL SECRETARIAT OF THE MECHANISM

1. Recommend that the General Assembly of the OAS adopt the decisions that are most appropriate so:

- a) That the Secretary General of the OAS, in accordance with Article 113 of the Charter, take the necessary steps to ensure that the Technical Secretariat that has been supporting the MESICIC, funded by the OAS Regular Fund, have as its primary mission to provide permanent services to this Mechanism, within the Secretariat for Legal Affairs.

Said decision should be approved within the framework of an ample and comprehensive redistribution of duties to ensure that the different support services provided by the Technical Secretariat for Legal Cooperation Mechanisms can continue in an efficient and uninterrupted manner.

- b) That the Technical Secretariat be given the additional human and material resources for its strengthening by the Regular Fund of the Organization.

2. Recommend that while the measures referred to in the preceding paragraph are being adopted, the Technical Secretariat can continue to provide the services required by the Mechanism using voluntary contributions.

II. FUNDING THE MECHANISM

3. Recommend that the States Parties that have contributed to funding of the Mechanism's activities consider continuing doing so and that those who have not contributed consider making contributions for this purpose, so that the Mechanism can continue to carry out its work efficiently and optimally.

4. Recommend that, in accordance with provision 9 of the "Document of Buenos Aires", the Secretariat identify of internal OAS funding sources, such as the Regular Fund, and external funding sources such as international and regional financial institutions, and official national organs and others to fund the five necessary areas for the adequate operations of the Mechanism and the effectiveness of its recommendations, which are: the Technical Secretariat; the operating costs relative to the review process and the meetings of the Committee of Experts and the Conference of States Parties; the participation of government experts at the committee meetings; implementing the Committee's recommendations in the States Parties; and the consideration of the topics of collective interest by the Committee and its technical cooperation.

In this context, it is requested that the Chair of the Permanent Council and the Secretary General of the OAS seek the support of the Inter-American Development Bank (IDB) for the financing of the MESICIC.

These external funding sources should not, however, under any circumstances, infringe on the independence of the Committee of Experts.

III. FREQUENCY OF THE COMMITTEE'S MEETINGS AND COUNTRY REPORTS

5. Request the Committee that, taking into account the decisions adopted by the OAS General Assembly and the resources available, it adopt the measures that are needed to increase the review process within the framework of the first round, be it through the increase of the number of annual meetings from two to three, or through the increase of the number of draft country reports considered at each meeting, ensuring that 12 countries are reviewed per year. The measures that are adopted should take into account that the quality of these country reports is maintained.

6. Recommend that, if it is possible, the meetings of the Conference of States Parties of MESICIC be held immediately before or after the meetings of the Committee of Experts, in order to have a better exchange between the technical and political branches of the Mechanism.

7. Urge the Committee of Experts to complete the first review of all the applicable provisions of the Convention for all the States Parties as soon as possible, and that it try to present an estimated timeframe to the next meeting of the Conference of States Parties.

8. Request the Committee of Experts, based on the available resources, to consider the feasibility of including in its Rules provisions for site visits for all States for the purpose of gathering information within the review process. The site visits should be fully justified and carried out in agreement with the reviewed State.

IV. SUPPORT FOR COMMITTEE MEMBERS

9. Recommend to the States Parties that it take the necessary measures to ensure the participation of national experts at the meetings of the preliminary review subgroups and plenary sessions of the Committee and, to the extent possible, to ensure that their participation is permanent and continuous.

10. Recommend to the General Secretariat of the OAS that it continue managing the solidarity fund, funded by voluntary contributions with enough resources to support the participation in the Committee's meetings of the Experts of those States Parties that require it.

11. Promote training, wherever necessary, of experts of the States Parties.

V. TRANSLATION SERVICES AND TECHNOLOGICAL SUPPORT

12. Request the General Secretariat of the OAS to take the necessary measures to improve the quality and timeliness of the translation of the different versions of documents considered by the Committee, particularly the draft country reports.

13. Request the General Secretariat of the OAS to take the measures necessary to increase the number of computers with Internet access for use by the experts during the meetings of the Committee.

14. Suggest that, to the extent possible, the Committee's preliminary review subgroups use video-conferencing and other means to support and advance their work.

VI. IMPLEMENTATION OF THE COMMITTEE'S RECOMMENDATIONS

15. Endeavor to distribute the Committee's reports rapidly and efficiently to the bodies that, in accordance with their internal legal structure, are responsible for implementing the recommendations.

16. In accordance with the fundamental principles of its legal system, try to establish appropriate internal measures to follow up the implementation of the recommendations.

17. Recommend that the Committee promote the exchange of information on the experiences of the States Parties in the implementation of the Committee's recommendations.

VII. REPORTING ON THE IMPLEMENTATION OF THE RECOMMENDATIONS

18. Request the Committee, in conformity with its *Rules*, to adopt relevant measures for the purpose, in the framework of its meetings, of facilitating the submission of the information that the States Parties wish to provide on the implementation of the recommendations that the Committee has formulated.

VIII. ROLE OF CIVIL SOCIETY

19. Reiterate our support of the contribution of civil society organizations in the Committee's activities pursuant to the provisions of its *Rules*.

20. Recommend that the Committee study the feasibility to include in its *Rules* procedures to receive comments from civil society organizations regarding implementation of the Committee's recommendations.

21. Recommend that the States Parties, in accordance with its internal legislation, provide opportunities for civil society organizations to transmit to them their viewpoints and suggestions regarding the implementation of the Committee's recommendations.

IX. RESPONSES TO THE QUESTIONNAIRE AND DISSEMINATION OF THESE ANSWERS AND COUNTRY REPORTS

22. Urge those States that have not already done so to respond, as soon as possible, to the questionnaire adopted in the framework of the first round of review before the Committee's sixth meeting, and we request the Committee to conduct an appropriate follow-up of this decision at this meeting.

23. Urge those States that have not already done so to authorize the Technical Secretariat to publish on the Mechanism's Internet web page the responses to the questionnaire adopted in the framework of the first round of review and the updates of these responses, as well as the Committee's final reports regarding its respective States.

24. Urge each State Party to disseminate, among civil society and the media, the work of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption and, in particular, the Committee's final reports, as deemed appropriate.

X. COOPERATION

25. Request that, in the framework of the Committee, the exchange of information, experiences, and best practices, and the harmonization of legislations, and mutual technical assistance and cooperation be strengthened among the States Parties, in order to promote the implementation of the Convention and contribute to achieving the purposes set forth in its Article II.

26. Request the Committee to continue giving appropriate consideration to the topics of collective interest referred to in Article 36, b) of its *Rules* and, regarding the first topic it selected in this field, relative to the regulatory framework to prevent corruption in public procurement, to continue developing the methodology adopted for its treatment.

27. Request that, where appropriate, States Parties' specialists on topics of collective interest participate in the Committee of Experts meetings.

28. Request that, in the framework of the Committee, the exchange of information on technical cooperation programs or projects, regarding the topics referred to by the Convention, continue to be promoted.

29. Request the Technical Secretariat to continue promoting cooperation and exchange of information between the Committee of Experts and other evaluation or follow-up mechanisms of international instruments or commitments and in particular with MEM (CICAD-OAS) and with the United Nations, taking into account the new forms of cooperation established in the United Nations Convention against Corruption, and with the GRECO (Council of Europe), and OECD. In so far as possible, the

Committee and/or the Technical Secretariat will try to attend the meetings of the OECD's Working Group on Bribery in International Business Transactions, without disturbing the review process and within the resources available.

30. Recommend that the Committee of Experts, in the framework of Article 36 (b) and (c) of its *Rules*, to establish the necessary coordination that will allow it to seek expert advice, as it deems necessary, from Inter-governmental organizations and entities with expertise in the particular topic under review by the Committee or the particular provision of the Convention that it is analyzing.*

XI. FUTURE ROUNDS

31. Recommend to the Committee of Experts that, in the framework of the Document of Buenos Aires and Article 18 of the Rules of Procedure, it consider the convenience of organizing the next review round selecting a number of provisions of the Convention that will allow, if it is feasible, the simultaneous review of all the States. Recommend to the Committee that it report back to Chair of the Conference of States Parties of MESICIC in a timely manner on this subject.

XII. REPORTS

32. Request the Committee of Experts to report to the Chair of the Conference of the States Parties of MESICIC, on the measures adopted and progress achieved in implementing the conclusions and recommendations contained herein.

Request the Chair of the Conference of the States Parties of MESICIC to present a report at the next meeting of the Conference of States Parties of MESICIC based on the follow-up and periodic information from the Committee of Experts and Technical Secretariat, as appropriate, on the measures adopted and progress achieved in implementing these conclusions and recommendations.

* The "Conclusions and Recommendations on Concrete Measures to Strengthen MESICIC" were approved by the Conference of States Parties, by consensus, during the session held on April 2, 2004, in the First Meeting of the Conference of States Parties within the MESICIC framework, which took place at OAS Headquarters, Washington, D.C., United States of America, on April 1 to 2, 2004.

* Several Delegations consider that the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS) could be one of these organizations.