USA Supplemental Response: Request for Input Regarding the Structure and Content of the UN General Assembly Special Session on Corruption Political Declaration

The United States is pleased to provide the following supplemental response to the request for input regarding the structure and content of the political declaration to be adopted at the UN General Assembly Special Session (UNGASS) on corruption in 2021:

The United States believes the UNGASS on corruption represents an important opportunity for all Member States to reaffirm their commitment to implementing effectively the existing domestic and international anticorruption commitments they have made. These commitments and obligations are reflected in the strong existing international anticorruption framework, and a significant amount of time, attention, and resources have been invested in promoting their implementation. Accordingly, the political declaration adopted by the UNGASS should incorporate and carry forward key concepts that have been agreed by consensus by Member States in various UN bodies on many of the major anticorruption issues facing the Special Session. The United States has compiled much of this relevant language below for consideration. This language should provide a useful foundation for the zero draft of political declaration and can help inform the intersessional discussions and negotiations.

Prevention of Corruption

The fight against corruption requires a comprehensive and balanced approach. States parties must address the entire life cycle of corruption, which means equal attention, time, and resources must be placed on preventing corruption. Promoting effective implementation of international commitments to prevent corruption, particularly those enshrined in Chapter II of the UN Convention against Corruption (UNCAC), is critical to these efforts. Encouraging and supporting Member States to follow through on these commitments is an important responsibility for the international community.

Precedent Language

Acknowledging that the prevention of and the fight against all forms of corruption require a comprehensive and multidisciplinary approach, consistent with the United Nations Convention against Corruption and the domestic legal frameworks of States parties, including by implementing chapter II and article 36 of the Convention, which, inter alia, require States parties to take appropriate legislative and regulatory measures and ensure the existence of specialized bodies to prevent and combat corruption, consistent with articles 6, 7 and 36 of the Convention, (COSP resolution 8/3, PP1)

Calls upon States parties to ensure that public bodies have the mandate and capacity to analyse, evaluate and mitigate corruption risks, and routinely monitor the results of integrity programmes; (COSP resolution 8/3, OP5)

Urges States parties to consider adopting strategies to foster a culture of integrity, honesty and responsibility throughout all aspects of public administration and to consider adopting, in accordance with the fundamental principles of their legal systems, procedures
that reflect responsiveness, reliability, regulatory improvement, accountability, transparency and impartiality; (COSP resolution 8/3, OP7)

Calls upon States parties to continue and to reinforce the effective implementation of the preventive measures outlined in chapter II of the Convention, including by addressing the recommendations emanating from the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, and in the resolutions of the Conference of the States Parties; (COSP resolution 8/8, OP2)

Calls upon States parties to strengthen measures to prevent corruption in the public procurement process and the management of public finances, as well as to ensure adequate access to information, and to promote, as appropriate, the involvement of the private sector in the prevention of corruption; (COSP resolution 8/8, OP13)

Highlighting the prominence that the United Nations Convention against Corruption has given to the prevention of corruption as part of a comprehensive approach to fighting corruption by having its entire chapter II devoted to measures to prevent corruption, (COSP resolution 7/5, PP2)

Encourages States parties to promote, in accordance with the fundamental principles of their legal systems, the adoption, maintenance and strengthening of systems that promote transparency and prevent conflicts of interest and, where appropriate, to make use of innovative and digital instruments in this field; (COSP resolution 7/5, OP9)

Recognizes the importance of including the prevention of corruption in the broader development agenda, including through the implementation of Sustainable Development Goal 16 and other relevant Goals contained in the 2030 Agenda for Sustainable Development, and through other initiatives aimed at strengthening the coordination and exchange of such information with development partners; (COSP resolution 7/5, OP10)

**Implementation of international obligations to prevent and combat bribery in all its forms**

Bribery, including domestic bribery and solicitation as well as foreign bribery, is among the most pervasive and potentially destabilizing acts of corruption. All States parties to UNCAC have committed to criminalize active and passive domestic bribery as well as active foreign bribery, yet prevention of and enforcement against these acts remains a challenge. For example, many States parties have not formally criminalized foreign bribery as required under UNCAC Article 16(a). Many States parties have also yet to adopt such measures as may be necessary to establish the liability of legal persons for participation in the offences established in accordance with the UNCAC; such measures are critical to ensure those responsible for committing acts of bribery are held accountable. Ultimately, member States should reaffirm their commitment to actively prevent and combat bribery, in all its forms, as outlined in UNCAC Conference of States Parties (COSP) resolution 8/6. Member States should also identify and seek to address the challenges that prevent effective enforcement of bribery laws.
Precedent Language

Calls upon States parties to fulfil their obligations under articles 15 and 16 of the United Nations Convention against Corruption, in accordance with the Convention and its terms, to criminalize the bribery of national public officials, as well as of foreign public officials and officials of public international organizations, including the solicitation and acceptance of bribes by a national public official, and to strengthen their efforts to effectively enforce those laws; (COSP resolution 8/6, OP1)

Also calls upon States parties to the Convention to fulfil their commitments under article 26 of the Convention, in accordance with its terms, to establish the liability of legal persons for participation in the offences established in the Convention, including bribery of national public officials and of foreign public officials and officials of public international organizations, and to effectively enforce those laws with effective, proportionate and dissuasive criminal or non-criminal sanctions; (COSP resolution 8/6, OP2)

Further calls upon States parties to the Convention to fulfil their commitments, under articles 12 and 13, to prevent corruption involving the private sector, including the bribery of national and of foreign public officials and officials of public international organizations, by taking measures in accordance with their domestic law and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing, and calls upon States parties to effectively enforce those measures; (COSP resolution 8/6, OP3)

Denial of safe haven

Despite commitments by UNCAC States parties to deny safe haven to corrupt actors and the proceeds of their corruption, individuals are often able to travel and access their ill-gotten gains with impunity. There needs to be stronger action by Member States at the domestic level to deny safe haven to these individuals, thereby limiting their ability to enjoy the proceeds of corruption. This includes adopting and enforcing denial of entry measures as well as fulfilling international obligations related to the prosecution of corruption offenses and the identification, freezing or seizure and confiscation of the proceeds of crime derived from such offenses.

Precedent Language

Urges all States parties, within the framework of the United Nations Convention against Corruption, and in accordance with domestic legislation, to take concrete measures and to strengthen cooperation to hold any legal or natural person who has committed or is liable for an act of corruption accountable and recover the proceeds of crime by denying safe haven to such legal or natural persons and the proceeds of their crimes; (COSP resolution 7/1, OP1)

Reiterates that States parties should work towards denying safe haven to persons who have committed offences established in accordance with the UN Convention against Corruption
and to the proceeds of their crimes, consistent with domestic law; (COSP resolution 7/2, OP15)

Asset recovery

Emphasis on domestic asset recovery enforcement and action

Preventing and combating corruption is a shared responsibility among all Member States. Consequently, the UNGASS should emphasize the importance of domestic action by countries, including on asset recovery cases. Member States must enforce their own laws and investigate and prosecute cases within their own legal framework and provide effective international cooperation to assist in the investigation of criminal offenses and the recovery of proceeds of crime. Member States cannot solely rely on other countries to recover stolen assets.

Precedent Language

Calls upon States parties to the United Nations Convention against Corruption to take effective measures at the national level to ensure effective implementation of the provisions of the Convention, in particular chapter V of the Convention on asset recovery; (UNCAC COSP Resolution 8/1, OP1)

Recognizing that those who engage in corrupt acts, whether natural or legal persons, consistent with domestic law and the requirements of the Convention, should be held accountable and prosecuted by their domestic authorities, and that all efforts should be made to conduct a financial investigation into assets illegally acquired by them and to recover such assets through domestic confiscation proceedings, international cooperation for purposes of confiscation or appropriate direct recovery measures, (UNCAC COSP Resolution 7/1, PP2)

Recognizing the common difficulties experienced by States parties in establishing a nexus between identified assets and the crime from which such assets are derived, and emphasizing the critical importance of effective domestic investigative efforts and international cooperation to overcome such difficulties, (UNCAC COSP Resolution 6/2, PP17)

Balanced language on asset recovery and return

The UNGASS should address all aspects of the asset recovery process. Language in the declaration should be balanced, placing equal emphasis on important parts of asset recovery processes, including prevention, criminalization, international cooperation, and asset recovery.

Precedent Language

Encourages States parties to further work closely to strengthen capacities of competent authorities responsible for asset recovery to draw upon and improve the skills of experts on an ongoing basis in order to enhance the identification, tracing, seizure and confiscation of the proceeds of crime; UNCAC COSP Resolution 8/1, OP12.

Recalling article 30 of the Convention, which obliges States parties, in accordance with their legal system and constitutional principles, to take such measures as may be necessary
for the effective prosecution, adjudication and sanctioning of the offences established in accordance with the Convention, and bearing in mind that the application of article 30 facilitates the successful implementation of chapters IV and V of the Convention, UNCAC COSP Resolution 7/1, PP3)

Recalling also article 31 of the Convention, which obliges States parties, in accordance with their legal system and constitutional principles, to take measures to freeze, seize and confiscate the proceeds of crime derived from acts of corruption or property the value of which corresponds to such proceeds, and property used in or destined for use in offences established in accordance with the Convention, UNCAC COSP Resolution 7/1, PP4)

Recalling further article 46 of the Convention, in which States parties are mandated to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, UNCAC COSP Resolution 7/1, PP5)

Recalling its resolution 6/4 of 6 November 2015, in which it urged 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, UNCAC COSP Resolution 7/1, PP6)

Also calls upon States parties, consistent with article 52 of the Convention, to take measures and, where appropriate, strengthen regulations, in accordance with their domestic law, to require financial institutions within their jurisdiction to conduct enhanced scrutiny of accounts maintained by or on behalf of individuals who are or have been entrusted with prominent public functions and their family members and close associates; UNCAC COSP Resolution 7/1, OP6)

Further calls upon States parties, in line with articles 12, 14, 40, and 52 of the Convention, to take appropriate measures consistent with domestic law and international standards, including, where, appropriate the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, to promote transparency of legal persons, including by collecting information on beneficial ownership, overcoming undue obstacles that may arise from the application of bank secrecy laws, preventing the transfer of proceeds of crime and identifying suspicious financial transactions through effective due diligence practices; UNCAC COSP Resolution 7/1, OP2)

Calls upon all States parties, within the framework of the Convention and domestic laws and procedures, to prevent, criminalize, investigate, prosecute and punish acts of corruption covered by the Convention, including by enforcing appropriate measures required to sanction such acts in the public and private sectors, including with regard to the liability of legal persons that violate national anti-corruption laws, as well as their executives, employees, intermediaries and other individuals; (UNCAC COSP Resolution 7/1, OP5)
Also calls upon States parties to afford one another the widest measure of cooperation, in line with article 51 of the Convention, and to make increased efforts to ensure the return or disposal of confiscated property in accordance with article 57 by taking measures to the greatest extent possible within their domestic legal systems:

(a) To prevent, detect and deter in a more effective manner the international transfer of proceeds of crime derived from corruption;

(b) To identify, trace, seize, recover and return proceeds of crime derived from corruption, including by taking measures to enhance compliance by banks and designated non-bank financial institutions;

(c) Whenever necessary, with the aim of reaching enforceable judgments, to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with the Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences; (UNCAC COSP Resolution 7/1, OP12)

Transparent and Accountable Return

States parties are increasingly coordinating and cooperating on the asset recovery process to ensure the mutual interests of both requesting and requested countries are addressed and their domestic laws and international commitments respected. In this regard, there is growing consensus among Member States that asset return should occur in a transparent and accountable manner. Ensuring transparency and accountability in the disposition (transfer and use) of confiscated assets is necessary to restoring public trust eroded and resources depleted by corruption. Accountability and transparency are also necessary to ensure that confiscated assets are protected from corruption once they are returned.

Precedent Language

Urges States parties to, in accordance with the fundamental principles of their legal systems, take appropriate measures to promote transparency and accountability in the management of public finances, including recovered and returned assets (UNCAC COSP Resolution 8/9, OP3)

The Working Group recommended that the Secretariat collect information on examples of how countries have worked together to ensure transparency and accountability in the return and disposal of confiscated proceeds of corruption. (Report of Twelfth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery, paragraph 75)

Reaffirm the many modalities available for asset return and disposition

The UNCAC provides several different options for the return and disposition of confiscated proceeds for crime. Given that every asset recovery case is unique, the specific modality for return and disposition should be determined on a case-by-case basis to best fit the circumstances of the case.
Encourages States parties to make full use of the possibility of concluding agreements or mutually acceptable arrangements for the return and final disposal of confiscated property pursuant to article 57, paragraph 5, of the Convention and to consider the Sustainable Development Goals in the use and management of recovered assets, while fully respecting the principles of sovereign equality and the territorial integrity of States and of non-intervention in the domestic affairs of other States, in line with article 4 of the Convention; (UNCAC COSP Resolution 7/1, OP8)

Progress in asset return

The international community has experienced significant progress in the return and disposition of recovered stolen assets over the past decade. This progress should be recognized in the UNGASS political declaration.

NEW LANGUAGE: Welcoming recent progress made in the transfers of confiscated proceeds of crime to benefit those harmed by corruption, including recent bilateral and multilateral agreements between Member States to return several billion dollars in confiscated assets, emanating from the successful investigation and prosecution of offences established under the Convention, including domestic bribery, foreign bribery, embezzlement, misappropriation, diversion of property, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, money-laundering, concealment and obstruction of justice,

Importance of non-government stakeholders in anticorruption efforts

Non-government stakeholders are an essential partner in the fight against corruption. Member States should strive to collaborate with these stakeholders in anticorruption efforts. Member States should also ensure non-government stakeholders have the open operating environment necessary to conduct anticorruption activities effectively and safely.

Precedent Language

Noting with appreciation the important role of civil society, academia, the private sector and the media in identifying, detecting and reporting on cases of corruption, (UNCAC COSP Resolution 7/2, PP12)

Urges States parties to promote, within their means and in accordance with the fundamental principles of their domestic laws, the participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations, community-based organizations and the private sector, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threats posed by corruption; (UNCAC COSP Resolution 7/2, OP17)

Protection of Journalists

Civil society organizations (CSOs) and the media play an important role in exposing acts of corruption. This work puts them in danger of acts of violence and intimidation by government officials and non-government actors. Member States should acknowledge the important role CSOs and the media play, and commit to ensuring their protection.
Precedent Language

Aware of the importance of efforts to publicize the threat of transnational organized crime and the impact of such crime on communities, businesses and political institutions, and the essential role that professional media and journalists have to play in raising public awareness in this regard, and noting also the exceptional risks that many reporters are exposed to in the course of their duties in reporting on organized crime, including violent criminal reprisals, (CCPCJ 20/4, PP13)

Recognizing also that the work of journalists often puts them at specific risk of intimidation, harassment and violence, Recognizing that impunity for attacks against journalists and media workers constitutes one of the main challenges to strengthening the safety of journalists; (PP10 and PP13, GA 68/163)

Urges Member States to do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies (GA 68/163, OP5)

Calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of: (a) legislative measures; (b) awareness-raising in the judiciary and among law enforcement officers and military personnel, as well as among journalists and in civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly condemning attacks; and (e) dedicating the resources necessary to investigate and prosecute such attacks; (GA 68/163, OP6)

Important role of Existing Frameworks in Combating Corruption

Given the substantial focus across international anticorruption fora on preventing and combating illicit financial flows, it is incumbent on Member States to reaffirm the importance of implementing existing frameworks that also play a significant part in addressing corruption-related offenses such as the United Nations Convention against Transnational Organized Crime (2000), the United Nations Convention against Corruption (2003) the International Convention for the Suppression of the Financing of Terrorism (1999) and the comprehensive international standards set forth in the FATF revised Forty Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation. In particular, the UNGASS should recognize the important role the Financial Action Task Force (FATF) plays in preventing and combating money laundering.

Precedent Language

Taking into account the activities of the Financial Action Task Force on Money Laundering, in particular its Forty Recommendations and eight Special Recommendations on Terrorist Financing, and those of similar regional bodies, such as the Egmont Group of Financial Intelligence Units, (ECOSOC Resolution 2004/29, PP2)
Further stresses the importance of good governance and the need to fight against corruption, money-laundering and terrorist financing, in particular through the implementation of the United Nations Convention against Transnational Organized Crime (2000), the United Nations Convention against Corruption (2003) the International Convention for the Suppression of the Financing of Terrorism (1999) and the comprehensive international standards set forth in the FATF revised Forty Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation, including by adopting and effectively implementing legislative and regulatory measures, to enable the competent domestic authorities to freeze or seize, confiscate and manage criminal assets, in order to combat illicit finance including terrorist financing and money-laundering; (S/RES/2482 (2019) 4/7 19-12422, OP3)

**Promoting technical assistance to support the effective implementation of the United Nations Convention against Corruption**

Technical assistance plays an important role in developing and maintaining the required technical capacity and expertise often needed for Member States to effectively implement their international anticorruption obligations and commitments. The country reviews completed under the UNCAC’s Implementation Review Mechanism are a good resource to help inform technical needs for Member States and should be used by assistance recipients and providers when developing assistance programs. Additionally, non-government stakeholders can play an important role in providing this assistance and should be included, where appropriate, in the process.

**Precedent Language**

*Endorses country-led and country-based, integrated and coordinated technical assistance programme delivery as an effective vehicle for furthering implementation of the Convention, and encourages donors and other assistance providers to incorporate those concepts and capacity-building into their technical assistance programmes, (COSP resolution 3/4, OP 5)*

*Bearing in mind the important role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in capacity-building and technical assistance, at the request of the recipient country, (COSP resolution 7/3, PP 10)*

*Encourages States parties to continue to afford one another, according to their capacity, the widest measure of technical assistance, especially for the benefit of developing countries, including in the form of material support, capacity-building and training, upon request, consistent with chapter VI of the United Nations Convention against Corruption;7 (COSP resolution 7/3, OP2)*

*Reaffirms the importance of addressing the technical assistance priorities identified in the country reviews, and invites technical assistance providers to consider those priorities either for new technical assistance programmes or for incorporation into ongoing programmes; (COSP resolution 7/3, OP4)*

*Encourages States parties to continue voluntarily sharing information on the provision of technical assistance and their needs for such assistance, including those needs identified*
through the review process, and to consider providing such information to the Secretariat for publication on its website; (COSP resolution 7/3, OP10)

Encourages States parties under review and, upon request, the Secretariat, to consider coordinating the official in-country publication and launch of the executive summary of the country review, to include technical assistance needs, and invites States parties under review to inform both local representatives of international, bilateral and multilateral technical assistance providers and donors, and individuals and groups outside the public sector, such as civil society, non-governmental organizations, academia and community-based organizations, about their technical assistance needs; (COSP resolution 7/3, OP11)