



General Assembly

Distr.: General
4 November 2002

Original: Arabic, English and
Russian

Ad Hoc Committee for the Negotiation of a Convention against Corruption

Fourth session

Vienna, 13-24 January 2003

Item 3 of the provisional agenda*

**Consideration of the draft United Nations Convention
against Corruption, with particular emphasis on articles 2
(remaining definitions), 3, 4, 20, 30, 32-39 and 40-85**

Proposals and contributions received from Governments

Contents

	<i>Page</i>
I. Introduction	2
II. Proposals and contributions received from Governments	2
India	2
Lebanon	3
Pakistan	4
Russian Federation	6

* A/AC.261/10.



I. Introduction

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee for the Negotiation of a Convention against Corruption the proposals and contributions received from Governments relating to the draft United Nations Convention against Corruption.

II. Proposals and contributions received from Governments

India

[Original: English]

Article 67

1. It is proposed to amend article 67 to read as follows:

*“Article 67
“Recovery mechanisms*

“Each State Party shall, in addition to making available to a requesting State Party all facilities of mutual legal assistance provided for in article [...] [Mutual legal assistance] of this Convention in respect of seizure, confiscation, recovery and restitution of illicitly acquired assets, take the necessary steps to empower its competent authorities, in accordance with the principles of its domestic law, to provide assistance to the requesting State Party in the recovery of illicitly acquired assets and, to that end, shall:

“(a) Permit the requesting State Party to initiate legal action in the courts of the requested State Party for the purpose of establishing the ownership of illicitly acquired assets located in the territory of the requested State Party, by presenting either:

“(i) Evidence of title to or ownership of the assets; or

“(ii) A final judgement establishing title to or ownership of the assets issued by a competent court of the requesting State Party, which judgement may be given effect in the territory of the requested State Party;

“(b) Permit its competent authorities to give effect to a final judgement of a competent court of the requesting State Party ordering the confiscation of illicitly acquired assets located in the territory of the requested State Party;

“(c) Permit the requesting State Party to initiate legal action in a competent court of the requested State Party with a view to confiscating illicitly acquired assets originating in the territory of the requesting State Party and located in the territory of the requested State Party, pursuant to an investigation or proceedings involving the said illicitly acquired assets;

“(d) Adopt such measures as may be necessary to enable it, at the request of the requesting State Party, promptly:

“(i) To seize, restrain or otherwise prevent any dealing in or transfer or disposal of assets in respect of which the requesting State Party has furnished reasonable evidence that the assets were illicitly acquired;

“(ii) To preserve such assets in anticipation of their confiscation under a judgement issued by a competent court of the requesting State Party;

“(iii) To restrain assets following an arrest or charge made in the territory of the requesting State Party on the grounds that the assets were illicitly acquired;

“(iv) To give effect to a restraining order issued by a competent court of the requesting State Party;

“(v) To restrain assets upon request, provided that the request is accompanied by documentation setting forth reasonable grounds for believing that the assets will become liable to confiscation by a competent court in the requesting State Party;

“(e) Adopt such measures as may be necessary to ensure the prompt return of illicitly acquired assets to the requesting State Party; and

“(f) Consider adopting other measures necessary to facilitate the prompt recovery of illicitly acquired assets and their restitution to the requesting State Party.”

Lebanon¹

[Original: Arabic]

Article 42

Paragraph 6

1. It is proposed to amend paragraph 6 of article 42 to read as follows:

“For the purposes of this article and article [...] [International Cupertino for confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order, according to its legislative principles, that bank, financial or commercial records be made available or seized. States Parties shall not decline to act under the provisions of this article on the ground of bank secrecy.”

Articles 44 and 45

2. The delegation of Lebanon supports the merging of articles 44 and 45 of the draft Convention in view of the connection between liability for acts of corruption and compensation for them.
3. The delegation of Lebanon proposes to deal with the liability and compensation provided for in articles 44 and 45 of the draft Convention from the criminal point of view, since the corruption under discussion is a criminal offence characterized by criminal intent to commit a crime and requires an international

¹ Proposal based on the version of the draft United Nations Convention against Corruption contained in documents A/AC.261/3 (Parts II and III).

convention to combat it. Criminal responsibility should not be confused with civil responsibility resulting from a mistake, which could be committed by a person or public official in the course of an incidental case of corruption.

4. The delegation of Lebanon proposes that the question of compensation for fault by a public official who has unintentionally facilitated an act of corruption should be left to the domestic legislation of each State Party, either by initiating legal action against the State or against its public official.

5. Differentiation should be made between a compensation judgement, which is decided by a criminal court, and following up the funds that are the subject of compensation, which is carried out in accordance with the domestic laws of the States Parties and according to the relationship between them.

Article 45

Subparagraph 3 (a)

6. Subparagraph 3 (a) reads as follows: “The defendant has intentionally committed or authorized the act of corruption or has not taken reasonable measures to prevent it.” The last phrase of the subparagraph, “has not taken reasonable measures to prevent it”, seems to be ambiguous and non-specific and falls under omissive responsibility resulting from civil wrong.

Article 63

Paragraph (f)

7. It is proposed that paragraph (f) should read as follows:

“(f) ‘Public official’ shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, any person exercising a public function or a function for a public or joint enterprise or for an autonomous utility and any official or agent of a public international organization.”

Pakistan

[Original: English]

Article 67

Subparagraph (d)

1. The delegation of Pakistan supports the proposal but suggests that the “provisional measures” should appear as a separate article and should be broken down and amended to read as follows:

“1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to enable it, at the request of another State Party:

“(a) Promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property where there are reasonable grounds for believing that it will be subject to recovery as illicitly acquired assets;²

“(b) To recognize and give effect to a restraining order issued by a court of competent jurisdiction in the requesting State.³

“2. Whether or not a request has been made, a State Party may take measures enabling it to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property on the basis of a formal investigation, foreign arrest or charges related to the illicit acquisition of the property.⁴

“3. The measures referred to in paragraphs 1 and 2 of this article would be taken in respect of the property irrespective of the name in which it is held.”⁵

Article 71

2. The proposal for article 71 is based on the extensive debate that divided opinions on the existing article 71 and attempts to clarify that the requested State Party would be deemed to have performed its obligations under the Convention when it has transferred the assets to the affected State Party that thereafter the affected State Party should design a legislative method to ensure that proceeds reach the victims and owners of the property.

“1. Illicitly acquired assets confiscated and taken over by a requested State Party pursuant to articles [...] [articles on preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds] shall be returned to the affected State or disposed of in the following manner:

“(a) If the assets are in the nature of transferable funds, they shall be immediately transferred to the affected State;

“(b) If the assets are in the nature of immovable property, stocks or other instruments, they shall be sold, the affected State shall be informed and the proceeds shall be transferred to the affected State;

“(c) If the assets are found to be in any other form or thing of value, the affected States shall be consulted on their disposal and the proceeds shall be transferred to the affected State.

² The request can be made by any administrative authority of any requesting State Party, without first obtaining a judicial order. The request can even be supported by an affidavit detailing the grounds for believing that the property in question will be subject to recovery as illicitly acquired assets.

³ It should be noted that no distinction is made between an order issued by a “civil court” and one issued by a “criminal court”. The choice is best left to the requesting State according to its own preferences and procedural conveniences.

⁴ The State receiving the request can itself activate the process of provisional measures, once it has been informed that a formal investigation is taking place, an arrest has been made or a charge has been brought.

⁵ This would eliminate the possibility of property being hidden under a different name, which is a common practice.

“2. While carrying out the disposal in the manner described above, the requested State may allow the person in whose name the assets were hidden, within a predetermined time limit, to provide evidence of the legitimacy of the origin of the assets, funds or property.

“3. The affected State, after receiving the returned illicitly acquired assets, shall be responsible for making payments to the victims, potential claimants or rightful owners or other rightful recipients within the State and, in that regard, the affected State shall pass the necessary legislation.

“4. The requested State, after having returned the illicitly acquired assets to the affected State in accordance with paragraph 1 of this article, shall no longer be held responsible for any claims in respect of the assets from any victim, potential owner, or other State.”

Russian Federation

[Original: Russian]

1. The delegation of the Russian Federation proposes the following amendments to article 40:

Article 40

“Article 40

“Prosecution, adjudication and sanctions

“1. Each State Party shall make the commission of an offence established in accordance with articles [...] [articles on criminalization] of this Convention liable to criminal sanctions, including property sanctions, that take into account the gravity of that offence.”

Article 42

2. The delegation of the Russian Federation proposes the following amendment to article 42:

“Article 42

“Confiscation and seizure

“1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable the confiscation of:

“(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

“(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention;

“(c) Property or other assets which, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by this Convention.”

Article 56

3. The delegation of the Russian Federation, which fully supports option 1, the text of which is taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14), proposes that article 56 should read as follows:

*“Article 56**“Joint investigations*

“States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint groups. In the absence of such agreements or arrangements, in appropriate cases and if national law is not thereby violated, joint investigations may be undertaken by agreement on a case-by-case basis. The individuals who are members of such groups shall act only with the approval of the appropriate authorities of the State Party in whose territory the investigation is taking place. In all such cases, the sovereignty of the State Party in whose territory the investigation is taking place shall be fully respected.”

Article 60

4. It is proposed to amend article 60 as follows:

*“Article 60**“International cooperation for purposes of confiscation*

“1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention situated in its territory or for confiscation of other property referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention that is situated in its territory and that, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by this Convention shall, to the greatest extent possible within its domestic legal system:

“(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

“(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article [...] [Confiscation and seizure], paragraph 1, of this Convention.

“2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation

and seizure], paragraph 1, of this Convention or other property referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention that is situated in its territory and that, pursuant to a final court order, may be converted into State revenue as a sanction for offences covered by this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.”
