



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

Distr.: Limited
28 August 2007

Original: English

Open-ended Intergovernmental Working Group on Asset Recovery

Vienna, 27 and 28 August 2007

Draft report

Chairman: Dominika **Krois** (Poland)

I. Introduction

1. In its resolution 1/4, the Conference of the States Parties to the United Nations Convention against Corruption decided to establish an interim open-ended intergovernmental working group, in accordance with article 63, paragraph 4, of the United Nations Convention against Corruption and rule 2, paragraph 2, of the rules of procedure for the Conference of the States Parties, to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption.

2. In the same resolution, the Conference of the States Parties also decided that the working group should perform the following functions:

(a) Assist the Conference of the States Parties in developing cumulative knowledge in the area of asset recovery, especially on the implementation of articles 52-58 of the Convention, such as through mechanisms for locating, freezing, seizing, confiscating and returning the instruments and proceeds of corruption, in particular, the provisions of article 57;

(b) Assist the Conference of the States Parties in encouraging cooperation among relevant existing bilateral and multilateral initiatives and to contribute to the implementation of the related provisions of the Convention under the guidance of the Conference;

(c) Facilitate exchange of information among States by identifying and disseminating among States good practices to be followed to strengthen, both at the national level and in the framework of mutual legal assistance in criminal matters, efforts to prevent and combat corruption and facilitate the return of the proceeds of corruption;



(d) Build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities and anti-corruption bodies and practitioners involved in asset recovery and the fight against corruption and by serving as a forum for them;

(e) Facilitate the exchange of ideas among States on the expeditious return of assets, including ideas on plans for providing legal and technical expertise that requesting States need in order to follow international legal procedures for asset recovery;

(f) Assist the Conference of the States Parties in identifying the capacity-building needs, including long-term needs, of States parties in the prevention and detection of transfers of proceeds of corruption and income or benefits derived from such proceeds and in asset recovery.

3. Also in the same resolution, the Conference of the States Parties decided that the working group should meet during the sessions of the Conference and, as appropriate, should hold at least one intersessional meeting within existing resources. The Conference also decided that the working group should submit to it reports on all its activities.

II. Organization of the meeting

A. Opening of the meeting

4. The Open-ended Intergovernmental Working Group on Asset Recovery held its first meeting in Vienna on 27 and 28 August 2007.

5. The Chairperson opened the meeting by highlighting the importance of international cooperation for global action against corruption. She noted the crucial role of asset recovery as a fundamental principle of the United Nations Convention against Corruption. She invited the participants to discuss issues interactively in order to foster the exchange of experiences and best practices in asset recovery cases.

B. Adoption of the agenda and organization of work

6. Prior to the adoption of the agenda, one representative expressed concern about whether a single intersessional meeting of the Working Group would be sufficient to advise and assist the Conference of the States Parties in the implementation of its mandate on asset recovery. The speaker also sought clarification on what the Working Group was expected to produce. The Secretary pointed out that the Conference of the States Parties, in its resolution 1/4, on the establishment of the Working Group, had decided that the Working Group should meet during the sessions of the Conference and, as appropriate, should hold at least one intersessional meeting within existing resources. He noted that the resources available to the secretariat had allowed for only one intersessional meeting. With respect to the outcome of the meeting of the Working Group, he also noted that the Conference, in the same resolution had also decided that the Working Group should

submit reports on all its activities to the Conference. The secretariat would prepare a draft report and submit it for review and adoption by the Working Group.

7. On 27 August, the Working Group adopted the following agenda:
 1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
 2. Implementation of the mandate on asset recovery of the Conference of the States Parties to the United Nations Convention against Corruption:
 - (a) Development of cumulative knowledge in the area of asset recovery, especially on the implementation of articles 52-58 of the United Nations Convention against Corruption;
 - (b) Cooperation among relevant bilateral and multilateral initiatives;
 - (c) Facilitating the exchange of information among States;
 - (d) Building confidence and encouraging cooperation between requesting and requested States;
 - (e) Facilitating the exchange of ideas among States on the expeditious return of assets;
 - (f) Identifying capacity-building needs of States parties in the prevention and detection of transfers of proceeds of corruption and income or benefits derived from such proceeds and in asset recovery.
 3. Conclusions and recommendations.
 4. Adoption of the report.

C. Attendance

8. The following States parties to the Convention were represented at the meeting of the Working Group: Algeria, Angola, Argentina, Australia, Austria, Bolivia, Brazil, Burkina Faso, China, Colombia, Costa Rica, Croatia, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, France, Hungary, Indonesia, Jordan, Kuwait, Latvia, Lithuania, Madagascar, Mexico, Netherlands, Nigeria, Norway, Peru, Philippines, Poland, Romania, Russian Federation, Slovakia, Spain, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

9. The following States signatories to the Convention were represented by observers: Belgium, Brunei Darussalam, Canada, Czech Republic, Ethiopia, Germany, Greece, Haiti, Iran (Islamic Republic of), Ireland, Italy, Japan, Liechtenstein, Portugal, Saudi Arabia, Singapore, Sudan, Sweden, Switzerland, Thailand and Tunisia.

10. The European Community, a regional economic integration organization signatory to the Convention, was represented at the meeting.

11. The following observer States were also represented: Democratic Republic of the Congo, Lebanon, Oman and Slovenia.

12. The following Secretariat units, United Nations bodies, funds and programmes, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and specialized agencies and other organizations of the United Nations system were represented by observers: United Nations Human Settlements Programme (UN-Habitat), United Nations Development Programme, United Nations Interregional Crime and Criminal Justice Research Institute (UNICRI), United Nations Educational, Scientific and Cultural Organization, World Bank and International Monetary Fund.

13. The following intergovernmental organizations were represented by observers: Commonwealth Secretariat, Council of Europe, Council of the European Union, Eurojust, European Police Office (Europol), International Organization for Migration and Offshore Group of Banking Supervisors.

III. Implementation of the mandate on asset recovery of the Conference of the States Parties to the United Nations Convention against Corruption

14. The Director of the Division for Treaty Affairs noted that asset recovery was among the most rewarding and most challenging topics of anti-corruption policy. She noted that every year immense wealth was diverted from public budgets and that those funds could hold great potential for development in the countries of origin. In the United Nations Convention against Corruption, the chapter on asset recovery contained the most comprehensive and innovative provisions in that area in the entire body of relevant international criminal law. The Convention, however, was only the point of departure. She noted that the first challenge for many Governments and institutions in their day-to-day work with the Convention was the lack of knowledge. As asset recovery was a recent area of international anti-corruption activity, more knowledge and information were required on how asset recovery worked in practice. She emphasized the importance of understanding the impact of the Convention and identifying successful practices. Asset recovery cases resolved in the future would provide useful information on what worked and what did not and would be the best source of lessons learned. She noted that asset recovery, like all other forms of international cooperation, depended on confidence and trustful cooperation. The implementation of asset recovery provisions was new to all countries, developed and developing alike. She therefore recommended that the Working Group should discuss the proposals that had been made to strengthen technical assistance and should establish priorities in that area.

A. Development of cumulative knowledge in the area of asset recovery, especially on the implementation of articles 52-58 of the United Nations Convention against Corruption

15. Several speakers noted their countries' experience with asset recovery cases and in the wider field of international cooperation. Some speakers highlighted new

laws that had been enacted in their countries to implement chapter V of the Convention, new bilateral and multilateral agreements that had been entered into, new institutional arrangements that had been made to support asset recovery, or seminars and other events that had been organized for the development of knowledge and analysis of cases. Some speakers reporting on cases of asset recovery noted that, while large-scale cases were of considerable importance, a high number of small cases might have the same or greater economic impact on countries and presented considerable challenges.

16. One speaker recommended the establishment of a mechanism for asset recovery that would contribute to more effective coordination between requesting and requested States. The mechanism, which should be composed of legal experts, should provide for the following: (a) guidance and advice on asset recovery requests; (b) coordinating between requesting and requested States; (c) attempting to overcome differences between the legal systems of requesting and requested States; and (d) following up on the implementation of the Convention, in particular its provision on international cooperation. The work of the mechanism should be reflected in a report and recommendations to the Conference of the States Parties.

17. Several speakers recommended undertaking further systematic analysis of and dialogue on asset recovery cases in order to record and understand successful practices, including on how the Convention was used to support asset recovery cases. They stressed that unsuccessful cases should also be analysed in order to learn from mistakes and that small cases and their specific needs should also be analysed.

18. Several speakers expressed interest in the establishment of a database containing the relevant legislation of States parties in all official languages of the United Nations, building on existing instruments to collect information on the implementation of the Convention. Two speakers referred to the study of the Asian Development Bank and the Organization for Economic Cooperation and Development, which provided useful information on asset recovery in the region of Asia and the Pacific. Another speaker mentioned a recent meeting of the Brookings Institution.

19. Several speakers suggested the establishment of practical guidelines for the implementation of chapter V of the Convention, especially with regard to bilateral and multilateral agreements. They recommended that the Working Group consider suggesting to the Conference of the States Parties at its second session that it undertake the establishment of such guidelines.

20. One speaker recommended that the Working Group should consider collecting information on forms of money-laundering in connection with corruption cases, inter alia, by organizing workshops on the subject.

21. Several speakers stressed the responsibility of financial institutions within the asset recovery process. The role of such institutions should become more operational and those institutions should assume more responsibility, including liability in the case of negligence. One speaker recommended that the Working Group should urge States to assume a political commitment for the strengthening of mechanisms used for the exchange of information between financial intelligence units, such as the mechanisms set up for issues related to efforts to counter money-laundering and combat the financing of terrorism.

22. Several speakers highlighted the importance of the first phase of an asset recovery case, namely the tracing, restraint, seizure and freezing of assets. Particular importance was given to acquiring a better understanding of effective mutual legal assistance. In that context, several speakers highlighted the time element and the importance of the swift exchange of information.

B. Cooperation among relevant bilateral and multilateral initiatives

23. During the discussion on agenda item 2 (b) entitled “Cooperation among relevant bilateral and multilateral initiatives”, a number of speakers stressed the importance of coordinating various initiatives in the area of asset recovery to enable the Conference of the States Parties to effectively carry out its mandate in the implementation of chapter V of the Convention. Some speakers suggested that it might be desirable to carry out a survey of existing initiatives.

24. A representative of the United Nations Office on Drugs and Crime (UNODC) noted that the coordination of initiatives was a crucial element of the mandate of the Conference. However, although the current proliferation of initiatives in the area of asset recovery provided a welcome indication of the high priority of the issue, it also represented a challenge in terms of ensuring consistent, accurate and coherent approaches. UNODC was actively pursuing areas of synergy with a number of institutes and partners, such as the World Bank and the International Centre for Asset Recovery. Speakers encouraged the strengthening of coordination with specific entities, including Europol (as the secretariat for the Camden Asset Recovery Inter-Agency Network), Interpol and Eurojust.

25. The Chairperson invited participants to provide information on initiatives undertaken in the area of asset recovery. Speakers included the representatives of Germany (speaking on behalf of the Group of Eight) and Portugal (speaking on behalf of the European Union) and the observers for Eurojust, the World Bank, Europol, the International Centre for Asset Recovery, the International Monetary Fund, the Commonwealth Secretariat and the Council of Europe.

26. Speakers noted that giving organizations an opportunity to be represented at the meeting and to contribute to the work of the Working Group was a positive step. Several speakers stressed the fact that the provisions of the Convention were being applied directly in a number of initiatives and welcomed further cooperation with the Conference and its secretariat. The representative of Eurojust highlighted the fact that facilitation by Eurojust in the speeding up of mutual legal assistance applied not only to European Union member States but also to third States, as evidenced by recent cases. The observer for the World Bank described the ongoing cooperation with UNODC in the development of the Stolen Asset Recovery Initiative, to be launched on 17 September 2007. This initiative would seek to assist requesting States in the recovery of stolen assets by providing assistance in the form of model legislation, training and advocacy.

27. Several speakers highlighted the importance of building cooperation at the early stages of asset recovery, specifically with regard to the tracing, freezing and seizing of such assets. Emphasis was placed on the crucial importance of informal networks such as the Camden Asset Recovery Inter-Agency Network and on the relatively successful experience of law enforcement agencies and financial intelligence units in that respect.