



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

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## Second session

Nusa Dua, Indonesia, 28 January to 1 February 2008

Item 3 of the provisional agenda\*

### Asset recovery

## Report of the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 27 and 28 August 2007

### 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 (General Assembly resolution 58/4, annex) and rule 2, paragraph 2, of the rules of procedure of the Conference, 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 also decided that the working group should perform the following functions:

(a) Assist the Conference 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 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 the 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,

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\* CAC/COSP/2008/1.



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 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 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 further 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 meeting of the Open-ended Intergovernmental Working Group on Asset Recovery was held in Vienna on 27 and 28 August 2007.

5. Dominika Krois (Poland), Chairperson of the Working Group and Vice-President of the Conference, 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 Convention and 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 asked whether a single intersessional meeting of the Working Group would be sufficient to advise and assist the Conference in the implementation of its mandate on asset recovery. The speaker also sought clarification as to the format that the results of the meeting would take. The Secretary pointed out that the Conference, 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 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, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, France, Guatemala, Hungary, Indonesia, Jordan, Kuwait, Latvia, Lithuania, Madagascar, Mexico, Morocco, Namibia, Netherlands, Nigeria, Norway, Peru, Philippines, Poland, Romania, Russian Federation, Slovakia, South Africa, 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, India, Iran (Islamic Republic of), Ireland, Italy, Japan, Liechtenstein, Pakistan, Portugal, Saudi Arabia, Singapore, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand and Tunisia.

10. The European Community, a regional economic integration organization that is a signatory to the Convention, was represented at the meeting.
11. The following States were represented by observers: Andorra, 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: Office of Internal Oversight Services, United Nations Human Settlements Programme (UN-Habitat), United Nations Development Programme, United Nations Interregional Crime and Criminal Justice Research Institute, Basel Institute on Governance, United Nations Educational, Scientific and Cultural Organization, World Bank and International Monetary Fund.
13. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Commonwealth Secretariat, Council of Europe, Council of the European Union, Eurojust, European Police Office (Europol), International Organization for Migration, League of Arab States, Offshore Group of Banking Supervisors and Organization of the Islamic Conference.
14. The United Nations Office on Drugs and Crime served as secretariat of the meeting.

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

15. The Director of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC) noted that asset recovery was among the most rewarding and most challenging topics of anti-corruption policy. She also 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 Convention, 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 pointed out 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. As the implementation of asset recovery provisions was new to all countries, developed and developing alike, she 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**

16. 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.

17. The representative of Egypt proposed the establishment of a mechanism for asset recovery that would strengthen the ability of States to implement the relevant provisions of the Convention and thus improve asset recovery. The mechanism, which should be composed of experts possessing proven expertise in disciplines relevant to asset recovery, should perform the following functions: (a) provide guidance and advice on asset recovery matters to the Conference; (b) provide assistance to States at their request on matters relating to asset recovery; (c) provide advice to States upon request on how to overcome differences between the legal systems of requesting and requested States; and (d) promote the implementation of the Convention, in particular its provision on international cooperation related to asset recovery. The results of the work of the mechanism should be reflected in reports and recommendations to the Conference.

18. 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 it was also necessary to analyse failures of or problems with asset recovery cases in order to learn lessons from any mistakes made and to analyse small cases and their specific needs.

19. Several speakers expressed interest in the establishment of a database containing the relevant legislation of States parties in all the 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.

20. 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 should consider suggesting to the Conference at its second session that it undertake the establishment of such guidelines aimed at assisting States in recovering stolen

assets. Those guidelines should be geared towards speeding up and simplifying international procedures.

21. 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.

22. 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. One speaker recommended that the Working Group should urge States to assume a political commitment to strengthen the 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.

23. Several speakers highlighted the importance of the time factor in the first phase of an asset recovery case, namely the tracing, placing, seizure and freezing of assets and information exchange. Particular importance was given to acquiring a better understanding of effective mutual legal assistance.

24. Speakers suggested that the States parties should explore the possibility of going beyond implementation of solely the mandatory requirements of the Convention.

## **B. Cooperation among relevant bilateral and multilateral initiatives**

25. 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 the various initiatives in the area of asset recovery in order to enable the Conference to effectively carry out its mandate regarding the implementation of chapter V of the Convention.

26. Several speakers provided updates on the activities and initiatives of their institutions and the assistance available from their institutions. Speakers suggested that a survey of existing initiatives should be carried out and the results presented to the Conference at its second session.

27. A representative of 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 of the Basel Institute on Governance. Speakers encouraged the strengthening of coordination with specific entities, including Eurojust, Europol (as the secretariat for the Camden Asset Recovery Inter-Agency Network) and Interpol.

28. 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, the Council of Europe, the European Commission and the League of Arab States.

29. 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 observer for 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. That 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.

30. 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. Speakers also noted efforts in the area of capacity-building and training for practitioners dealing with asset recovery proceedings and the strengthening of ties between those practitioners in order to build confidence.

### **C. Facilitating the exchange of information between States and the exchange of ideas on the expeditious return of assets and identifying capacity-building needs**

31. Several speakers highlighted the importance of national focal points for asset recovery, as they were considered particularly helpful in facilitating guidance and further contacts for requests within national systems. A number of speakers suggested the establishment of a network of focal points. One speaker suggested increasing the number of liaison officers.

32. Several speakers underscored the importance of mutual legal assistance and suggested the adaptation of the UNODC Mutual Legal Assistance Request Writer Tool to the specificities of asset recovery. Complementing the discussion on practical guidelines, a number of speakers supported the development of a practical handbook or manual laying out the operational steps of asset recovery.

33. Several speakers felt that asset recovery was a costly exercise. While those speakers pointed out that simplifying overly complex legal procedures could help keep costs within reasonable limits, they were in agreement in their concern that Governments would not be able to achieve successful results in a short period of time.

34. Several speakers recognized the urgent need to provide training to personnel of the authorities responsible for asset recovery, especially in the tracing, seizure

and confiscation of assets. Such training should also include information on the legal framework governing the management of such assets. One speaker suggested preparing a checklist on the costs and problems of the administration of seized property and educating the public on the use made of recovered assets.

#### **D. Building confidence and encouraging cooperation between requesting and requested States**

35. Several speakers elaborated on the need to build trust between the authorities of requesting and requested States. The above-mentioned network of focal points was considered helpful for building such trust. One speaker suggested creating a forum whereby the focal points could meet on a regular basis.

### **IV. Conclusions and recommendations**

36. The Working Group recommended the establishment of a database containing domestic legislation on implementing the asset recovery provisions of the Convention as a practical tool to be used in asset recovery cases. The Working Group noted that much of the information to be contained in that database was already being collected by UNODC through self-assessment reports and responses to the questionnaires on the United Nations Convention against Transnational Organized Crime. Additional information could be drawn from a number of national and multilateral sources, including the Asian Development Bank and Organization for Economic Cooperation and Development Anti-Corruption Initiative for Asia and the Pacific, the Commonwealth Secretariat, the International Association of Anti-Corruption Authorities and the International Centre for Asset Recovery. The database could also include the text of judicial decisions rendered in asset recovery cases and a compendium of all instances in which provisions of the Convention had been used in asset recovery proceedings.

37. The Working Group indicated that it would be useful to analyse legal and regulatory frameworks, determine basic evidentiary requirements under domestic law and prepare model provisions. In that context, proposals to develop different forfeiture models, including for non-conviction-based forfeiture, were submitted for further consideration by the Conference.

38. There was general agreement that more guidance was needed on how to operationalize the asset recovery provisions of the Convention. The Working Group recommended that a practical handbook for asset recovery should be drawn up by the Secretariat, tracking the asset recovery process step by step, from detection to the return of the assets.

39. The Working Group recommended expanding the UNODC Mutual Legal Assistance Request Writer Tool to include ways of appropriately formulating requests for asset recovery.

40. The Working Group recommended preparing a synopsis of all the various initiatives on asset recovery, expanding on the information contained in the background paper prepared by the Secretariat on innovative solutions to asset recovery (CAC/COSP/WG.2/2007/2) and including information on contact points,

specialization and concrete areas of work. It was agreed that such a synopsis would be useful when embarking on the operational aspects of asset recovery.

41. The Working Group recommended for consideration by the Conference means for gathering information on specific types of money-laundering cases related to corruption.

42. It was emphasized that there was a need for informal channels of communication and cooperation, either prior to making a formal request for mutual legal assistance or in cases where no formal request was required. In particular, the Working Group stressed the need to make effective use of cooperation with law enforcement agencies and financial intelligence units, while recognizing the role of the judiciary in international cooperation procedures to ensure accountability and due process. At the domestic level, the Working Group recommended close cooperation between anti-corruption agencies, law enforcement agencies and financial intelligence units. Regular meetings could enhance possibilities for asset recovery.

43. The Working Group noted the need to increase the responsibility of financial institutions and the financial intelligence units overseeing them, including through introducing measures to prevent or deal with, as appropriate, failure to report threshold or suspicious transactions.

44. The Working Group highlighted the need for the fast-tracking of asset seizure, freezing and confiscation procedures. To the extent possible, States should act speedily on foreign requests for asset confiscation in order to prevent the assets from being transferred to another destination. At the same time, the Working Group emphasized the importance of respecting the rule of law in all asset recovery procedures.

45. The Working Group recommended to the Conference the establishment of a global network of focal points on asset confiscation and recovery. The Working Group also suggested that administrative arrangements should be explored for the management of such a network, perhaps in the context of the developing partnership of UNODC with the World Bank and other organizations as appropriate.

46. The Working Group recognized the paramount importance of training and capacity-building in the area of international cooperation, particularly with regard to asset recovery. In that connection, the Working Group recommended the organization of annual meetings of asset recovery focal points, experts and competent authorities as a forum for peer training, exchange of knowledge, information-sharing and networking. It was agreed that such meetings would contribute at the same time to building a relationship of trust among practitioners.

47. The Working Group concluded that the proposal by the representative of Egypt on the establishment of a consultative mechanism (see para. 17 above) required further consideration.

## **V. Adoption of the report of the Working Group**

48. On 28 August, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2007/L.1 and Add.1).

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