



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

Distr.: General
3 June 2009

Original: English

Open-ended Intergovernmental Working Group on Asset Recovery

Vienna, 14 and 15 May 2009

Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 14 and 15 May 2009

I. Introduction

1. In its resolution 2/3, the Conference of the States Parties to the United Nations Convention against Corruption decided that the Open-ended Intergovernmental Working Group on Asset Recovery should continue its work, according to its mandate as set out in Conference resolution 1/4, to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption, including the consideration of any further proposals, should the Working Group deem it appropriate. The Conference also decided that the Working Group should continue its deliberations on the conclusions and recommendations contained in the report on its meeting (CAC/COSP/2008/4) with a view to identifying ways and means of translating them into concrete action.

2. Also in its resolution 2/3, the Conference decided that the Working Group should hold at least two meetings prior to the third session of the Conference in order to perform its mandated task, within existing resources.

II. Conclusions and recommendations

A. Developing cumulative knowledge

3. The Working Group recommended that the United Nations Office on Drugs and Crime (UNODC) consider preparing a compilation of cases relating to asset recovery, building on relevant experience of the Office.

4. The Working Group reiterated the need for activities aimed at developing cumulative knowledge to be carried out with broad consultation and participation of experts from different regions and legal systems.



5. Tools and knowledge products needed to be widely disseminated and follow-up on their effectiveness and usefulness should be considered by the Conference or the Working Group.
6. The role of financial institutions in fostering exchange of knowledge and data was also noted. Such institutions were to be included in the development of cumulative knowledge on asset recovery.
7. Work on the preventive measures contained in chapter V of the Convention was to be encouraged and emphasis was to be placed on effective financial investigations.
8. The Working Group recommended that products such as the non-conviction-based forfeiture guide be considered for the implementation of other provisions of the Convention.
9. The Working Group recommended that the self-assessment checklist be used to gather information on the implementation of the Convention on articles relating to asset recovery, including information on case law at the national level, both in requesting and requested States.
10. The Working Group welcomed the study undertaken by Eurojust on obstacles to asset recovery and suggested that the Secretariat prepare a summary to be submitted to the Conference for its information and conduct a similar study at the global level.
11. The Working Group recommended that UNODC explore how the database of asset recovery focal points could be amended with a view to making it possible to ascertain the contact details of persons in other jurisdictions.
12. The establishment of close links between asset recovery focal points and regional anti-corruption networks such as the Arab Anti-Corruption and Integrity Network was encouraged.
13. It was proposed that global and regional networks might be useful in providing practitioners with legislation, data and case law.
14. The Working Group emphasized the importance of political will in ensuring asset recovery and encouraged States parties to adopt a critical approach to their own systems and to seek to remove barriers to asset recovery, in particular by simplifying domestic procedures and by strengthening such procedures to prevent their misuse.
15. The Working Group emphasized the importance of providing technical assistance in the field of mutual legal assistance, including asset recovery, to officials and practitioners to enable them to draft requests and responses to requests.
16. The Working Group recommended that UNODC seek to forge more partnerships and coordinate additional technical assistance activities in matters related to asset recovery with other relevant organizations and bodies.
17. The Working Group emphasized the importance of strengthening the capacity of legislators, law enforcement officials, judges and prosecutors on matters relating to asset recovery.

III. Organization of the meeting

A. Opening of the meeting

18. The Open-ended Intergovernmental Working Group on Asset Recovery held its third meeting in Vienna on 14 and 15 May 2009.

19. The meeting of the Working Group was chaired by Cahyo R. Muzhar (Indonesia) on behalf of the President of the Conference. The chairperson recalled the ambitious mandate given to the Working Group by the Conference and the recommendations of the Working Group at its previous meetings on developing cumulative knowledge, building confidence and trust, and technical assistance.

20. The Secretary of the Conference reiterated the innovative and unprecedented nature of the provisions of chapter V of the United Nations Convention against Corruption,¹ which provided States parties with tools to fight corruption but also presented a number of challenges for the full implementation of the Convention. He emphasized the recommendations of the Working Group at its previous sessions on the creation and dissemination of knowledge, the establishment of confidence and trust for international cooperation and issues of technical assistance and capacity-building. He stressed the links between the work of the present Working Group and those established by the Conference, for review of implementation and technical assistance respectively. In particular, he highlighted that knowledge was crucial for progress in the implementation of the entire Convention and drew the attention of the Working Group to the progress made in the creation of the legal library, the establishment of a knowledge management consortium and the comprehensive self-assessment software.

B. Adoption of the agenda and organization of work

21. On 14 May, 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 recommendations of the Working Group:
 - (a) Developing cumulative knowledge;
 - (b) Building confidence and trust;
 - (c) Technical assistance.
3. Adoption of the report of the Working Group on its meeting.

¹ United Nations, *Treaty Series*, vol. 2349, No. 42146.

C. Attendance

22. The following States parties to the Convention were represented at the meeting of the Working Group: Algeria, Angola, Argentina, Austria, Azerbaijan, Benin, Bolivia (Plurinational State of), Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Greece, Indonesia, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kuwait, Malaysia, Mexico, Morocco, Namibia, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Romania, Russian Federation, Slovakia, South Africa, Spain, Sweden, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Yemen, Zambia and Zimbabwe.

23. The European Community, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

24. The following States signatories to the Convention were represented by observers: Andorra, Côte d'Ivoire, Czech Republic, Germany, India, Ireland, Japan, Liechtenstein, Singapore, Sudan, Swaziland, Switzerland, Syrian Arab Republic and Thailand.

25. Oman, an observer State, was also represented.

26. Palestine, an entity maintaining a permanent observer mission to the United Nations, was represented.

27. The following United Nations Secretariat entities, institute of the United Nations Crime Prevention and Criminal Justice Programme network and specialized agency of the United Nations system were represented by observers: Office of Legal Affairs of the Secretariat, United Nations Commission on International Trade Law, Basel Institute on Governance and the World Bank.

28. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Eurojust, European Police Office (Europol), International Criminal Police Organization (INTERPOL), International Organization for Migration and Organization for Security and Cooperation in Europe.

29. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

IV. Information on existing initiatives

30. The Secretary of the Conference and observers for the World Bank, in their capacity as Director and Deputy Director of the joint secretariat of the Stolen Asset Recovery (StAR) initiative, provided an update on the work of the initiative, which had been launched in September 2007. They highlighted the growing importance of asset recovery on the international agenda during the previous months, as reflected, in particular, by the inclusion of asset recovery in the Accra Agenda for Action (A/63/539, annex) resulting from the Third High-level Forum on Aid Effectiveness, held in Accra from 2 to 4 September 2008, in the Doha Declaration on Financing for

Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus (Assembly resolution 63/239, annex), held in Doha from 29 November to 2 December 2008, and in the final report of the Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets of the Group of 20 held in London in March 2009. They briefed participants on progress made on the three main components of the StAR initiative: the development of knowledge, technical assistance for capacity-building and preparatory assistance in the recovery of assets.

31. The Working Group was informed that requests for diverse kinds of technical assistance had been received from 17 States prior to the meeting of the Working Group and that the number of requests had increased sharply. With regard to the decision process on country engagement, it was clarified that the joint secretariat of the StAR initiative would, upon receipt of a request, enter into consultations with the requesting Government with the objective of working out a technical assistance concept. The concept was subject to approval by the Management Committee of the StAR initiative, which consisted of representatives of UNODC and the World Bank. It was stressed that no request for assistance had been refused to date, that no request would be refused for political reasons and that no conditionality would be attached to the provision of technical assistance through the StAR initiative. At the time of the meeting, technical assistance activities were being carried out in seven countries, while preparatory consultations were under way on requests.

32. Speakers expressed appreciation for the work of the StAR initiative. They welcomed the progress made in the development of practical tools and knowledge products, while emphasizing the need for flexible approaches and tailor-made technical assistance at the country level. The relationship between the activities of the StAR initiative and the mandate of the Working Group was discussed and it was emphasized that the work programme of the initiative had been developed taking into account the recommendations of the Working Group. The Secretary clarified that the initiative was equivalent to a technical assistance project and it was a modality used by the Secretariat to implement the mandates of the Conference and its working groups, in line with the call repeatedly made by Member States for the Secretariat to seek to forge partnerships with a view to improving coordination and avoiding duplication of effort. Several speakers stressed the importance of forging other partnerships and coordinating activities with other international organizations and bodies involved in relevant efforts. Speakers also stressed the importance of ensuring broad consultations with experts from States from all regions and representing all legal systems in the development of practical tools.

V. Implementation of previous recommendations of the Working Group

A. Developing cumulative knowledge

33. Pursuant to Conference resolution 2/3, the Working Group considered agenda item 2 (a), on developing cumulative knowledge in the field of asset recovery. Speakers underscored the importance of adopting an operational, practical and

analytical approach to developing knowledge products in order to enhance understanding and implementation of the provisions on asset recovery contained in the Convention. Speakers urged the Working Group to consider the issue in terms of identifying and overcoming obstacles to the successful recovery of assets.

34. Speakers welcomed the information provided in a background paper prepared by the Secretariat containing information on the different tools and knowledge products developed by UNODC, including in the framework of the StAR initiative (CAC/COSP/WG.2/2009/2). It was underlined that asset recovery was a long and complex process requiring different stages and procedures and that knowledge needed to be developed on all aspects. Speakers welcomed work done to develop practical guides and practitioners' tools, including an asset recovery handbook, the adaptation of the Mutual Legal Assistance Request Writer Tool to asset recovery and policy studies. The knowledge management consortium and the legal library under development by UNODC were seen as valuable repositories of data and analytical information.

35. The observer for the World Bank gave a presentation on a volume entitled *Stolen Asset Recovery: a Good Practices Guide for Non-Conviction Based Asset Forfeiture*, which had recently been published in the framework of the StAR initiative. The guide contained general policy issues related to non-conviction based forfeiture and 36 key concepts (of a legal, operational and practical nature) that such a forfeiture system should encompass. The guide was developed as a collaborative effort by a team of expert practitioners, including magistrates, prosecutors and lawyers from both civil and common law jurisdictions. The observer stressed that a non-conviction-based forfeiture regime should define the relationship between a non-conviction-based forfeiture case and any criminal proceedings, that it should specify procedural and evidentiary concepts and that a system of management of seized assets should be foreseen.

36. Some speakers expressed their appreciation for the guide and underlined that non-conviction-based asset forfeiture was useful for States that would consider acting in pursuance of article 54, subparagraph 1 (c), of the Convention. Some speakers shared experiences on their non-conviction-based forfeiture systems. It was stressed that States should strive to have the most comprehensive legal frameworks in place as that would give them the whole range of tools to trace and recover the proceeds of corruption. It was considered equally essential to take all necessary steps to enable practitioners to make the best use possible of the legal tools in place. Some speakers stressed that in developing non-conviction-based forfeiture legislation it was important to clearly articulate a sufficiently broad category of offences to which non-conviction-based forfeiture would be applicable. Some speakers raised the issue of statutes of limitations and non-retroactivity, which, depending on the respective legal system, may not apply to non-conviction-based forfeiture. Reference was also made to the permissibility of plea bargaining in forfeiture cases in certain domestic legislations.

37. A representative of the Secretariat, in his capacity as a representative of the joint secretariat of the StAR initiative, gave a presentation on a study on a global architecture for asset recovery, currently under development. He stressed that capacity for conducting financial investigations was scarce and that priority should be given to aligning the efforts of institutions responsible for the prevention of

transfers of proceeds of corruption with the effort of law enforcement institutions and that networks of trust between financial investigators should be strengthened.

38. The observer for Eurojust briefed participants on the institution's approach to asset recovery. It was noted that Eurojust supported cross-border investigations and prosecutions through cooperation and coordination between the national authorities of States members of the European Union. Eurojust had also formed partnerships with the national authorities of other States and with international or regional entities such as Europol, the European Judicial Network in Civil and Commercial Matters, the European Anti-fraud Office and the Ibero-American Legal Assistance Network (IberRED). Eurojust had conducted a study on the main issues at the European Union level, on the key legal provisions and main obstacles to asset recovery at the investigation and judicial phases and on the return and disposal of assets. All 27 States members of the European Union had contributed to the study. According to the results of the study, key obstacles for asset recovery included the proof of unlawful origin, bank secrecy, the principle of *ne bis in idem*, dual criminality requirements and, in general, conflicts between judicial systems.

B. Building confidence and trust

39. The Working Group considered agenda item 2 (b), on building confidence and trust in order to ensure the successful recovery of assets. Formal and informal contacts between requesting and requested States at the early stages of an asset recovery case were crucial to understanding the different legal requirements involved and overcoming obstacles at a preliminary stage. It was recalled that the designation of central authorities for mutual legal assistance was mandatory under the Convention and that personal contacts and constructive dialogue throughout the asset recovery process were useful. Lack of consultation at the initial stages of a case often led to delayed or failed implementation of the required procedures. Speakers stressed that asset recovery focal points should be designated officials with technical expertise in international cooperation and that they should be in a position to assist their counterparts in effectively managing requests. The importance of conducting thorough investigations and involving financial institutions at an early stage to assist law enforcement authorities was stressed.

40. The observer for INTERPOL briefed participants on the establishment of a database of focal points as a contribution to the StAR initiative. The database was supported by the I-24/7 communication network of INTERPOL and the INTERPOL Anti-Corruption Office, which assisted law enforcement agencies by providing training, tactical and strategic support. The database included information on focal points from 73 countries, over 60 of which were States parties to the Convention.

41. Speakers welcomed the establishment of the INTERPOL database of focal points and discussed whether States should be encouraged to agree to make part of the information collected in the database publicly available in order to facilitate swift cooperation. They expressed appreciation for the work of the Camden Asset Recovery Inter-Agency Network and encouraged the establishment of similar networks of practitioners in other regions.

42. Many speakers underlined that, due to its complexity, asset recovery had to be treated as a collaborative effort. Political will was key to initiating and pursuing

asset recovery cases, sharing information, speeding up procedures and cooperating efficiently. It was noted by the Secretary of the Conference that three elements were important in considering what was generally referred to as political will: knowledge about the requirements of the counterpart's legal system; respect for the specificities of legal frameworks and traditions; and capacity to cooperate in asset recovery cases, which needed to be enhanced in both requesting and requested States. It was stressed that States needed to put frameworks and systems in place that would enable them to function as both requesting and requested States in asset recovery cases.

C. Technical assistance

43. The Working Group considered agenda item 2 (c), on technical assistance. Speakers referred to the high cost of mutual legal assistance proceedings and, in particular, of asset recovery proceedings, which were due to the need for specialized legal advice and for making interventions in foreign jurisdictions. It was stressed, however, that the costs associated with those procedures were greatly reduced once States had put in place effective systems for investigation in support of the requesting State, mutual legal assistance, in particular by simplifying and speeding up the processing of requests. The full and consistent application of the Convention held the potential of further reducing or eliminating such costs.

44. The Working Group welcomed the discussion on the non-conviction-based forfeiture guide developed under the auspices of the StAR initiative and expressed the wish that training on the guide and on non-conviction-based forfeiture in general be provided to States upon request.

V. Adoption of the report

45. On 15 May 2009, the Working Group adopted the report on its meeting.
