



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

Distr.: General
16 November 2006

Original: English

First session

Amman, 10-14 December 2006

Item 2 of the provisional agenda*

**Consideration of ways and means to achieve the objectives
of the Conference of the States Parties in accordance with
article 63, paragraphs 1 and 4-7, of the United Nations Convention
against Corruption**

Asset recovery

Background paper prepared by the Secretariat

I. Introduction

1. Asset recovery represents a new and complex field of international cooperation. Attempts to trace and repatriate illegally exported wealth have proved to be difficult and may sometimes lead to friction between the Governments involved.

2. The United Nations first became engaged in the matter in December 2000, when the General Assembly adopted resolution 55/188, in which it called upon Member States to cooperate through the United Nations system by devising ways and means of preventing and addressing the illegal transfer of assets and repatriating illegally transferred funds. By virtue of that resolution, asset recovery became a key priority of the Ad Hoc Committee on the Negotiation of a Convention against Corruption. With a view to identifying the main challenges in the area of the repatriation of illegally transferred funds and exploring ways to assist Member States, the United Nations Office on Drugs and Crime (UNODC), in March 2001, convened a group of experts with practical and academic experience in the field. The experts were asked to consider problems associated with the illegal transfer of funds, the tracing and identification of such funds and the efforts and procedures required for the return of such funds to the countries of origin. They were also called upon to advise on a possible course of action by the United Nations in responding to requests for technical assistance in that field. In its resolution 2001/13 of 24 July 2001, the Economic and Social Council requested the

* CAC/COSP/2006/1.



Secretary-General to prepare for the Ad Hoc Committee a global study on the transfer of funds of illicit origin. The resulting study (A/AC.261/12) focused especially on funds derived from acts of corruption and the impact of corruption on economic, social and political progress, in particular in developing countries. Further, innovative ideas were presented regarding ways and means of enabling the States concerned to obtain information on the whereabouts of funds belonging to them and to recover such funds. It was noted in the study that substantial amounts of money were involved; attention was drawn to the economic hardship of countries that were unable to recover the assets concerned.

3. All that preliminary work facilitated the negotiation of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) which places emphasis on effective mechanisms to prevent the laundering of the proceeds of corrupt practices (article 14) and on asset recovery (chapter V). Chapter V of the Convention breaks new ground by declaring the return of assets to be a fundamental principle of the Convention and requiring States parties to afford one another the widest measure of cooperation and assistance in that regard (article 51). Subsequent provisions specify how cooperation and assistance are to be rendered.

II. Why looted assets are difficult to recover

4. The practical problems of recovering looted assets are diverse, including weaknesses in the prevention and control of money-laundering, loopholes in legal frameworks and a lack of expertise, capacity and resources to successfully trace, freeze and confiscate assets both domestically and internationally. Obstacles are also created by the diversity of approaches taken by different legal systems. Countries seeking the return of assets often face severe challenges in obtaining domestic freezing and confiscation orders that provide a sufficient basis for an international request and in obtaining the enforcement of such judgements. Even when orders are obtained and judgements are enforced, they may still fall short of meeting the high evidentiary and procedural standards required by the laws of developed countries, where substantial proceeds are most likely to be concealed. Most jurisdictions do not allow for the confiscation and return of assets except on the basis of a criminal conviction or some other proceeding that establishes according to a criminal standard of proof that offences have been committed and that the assets sought are the proceeds of those offences. The intermingling of such proceeds with other assets or with the proceeds of other crimes can lead to situations where more than one State may seek the recovery of the same assets.

5. While asset recovery is a costly enterprise even for developed countries, developing countries are further penalized because they often lack the necessary substantial expertise and financial resources to successfully recover assets. However, even if resources can be found and committed, the recovery effort may still not be successful because domestic authorities lack the expertise and professional capacity to successfully investigate and prosecute the predicate offence and the laundering of corruption proceeds or to collaborate with the States to which assets have allegedly been transferred.

III. Need for effective coordination of asset recovery initiatives

6. Many international, regional and national bodies have developed specialized programmes in the area of asset recovery, and more innovative initiatives are being proposed. The entry into force of the Convention provides a unique opportunity to address the challenge in an integrated manner. The aspiration for coordination of existing initiatives has found favour among parties. And such coordination is deemed essential to ensuring that the resources available are used in an efficient manner and that duplication is avoided. Especially in the area of technical assistance, coordination and open channels of communication will be crucial to ensuring the accurate assessment of needs as well as the consistency of the assistance to be provided.

IV. Current initiatives

United Nations Office on Drugs and Crime

7. In 2002, UNODC published a global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption (A/AC.261/12). In the study, problems associated with preventing and combating corruption and the transfer of assets of illicit origin, in particular in cases of large-scale corruption, were examined. The study presented in detail the specific obstacles faced by countries seeking recovery, including evidentiary and procedural problems, difficulties generated by the laundering or concealment of assets or their criminal origins and the possible reluctance of other States to return assets to a new Government owing to concerns about the stability or the freedom from further corruption of such a Government. The study also dealt with problems arising after the recovery of assets, including competing claims among countries and the problem of identifying individual victims or parties beneficially entitled to assets in the event that they are recovered.

8. UNODC has developed a range of tools to assist countries in implementing the Convention, which provide guidance on the implementation of the provisions on asset recovery in the Convention. Those tools are the *Legislative Guide for the Implementation of the United Nations Convention against Corruption*,¹ the draft technical guide on implementation of the Convention and the draft anti-corruption handbook for investigators and prosecutors.

9. In December 2004, UNODC launched a project on asset recovery in Kenya and Nigeria. In-depth assessments were conducted to examine the regulatory regimes of both countries and legal and technical obstacles to asset recovery at the national and international levels. Based on the results, the experts recommended legislative and other measures to prevent assets from leaving those countries and to recover assets that may have already been taken abroad.

¹ United Nations publication, Sales No. E.06.IV.16.

Group of Eight

10. The Ministers of Justice and Home Affairs of the Group of Eight countries met in Washington, D.C., on 11 May 2004 and agreed to take action to advance asset recovery, building upon the mandates of the United Nations Convention against Corruption as follows:

(a) Accelerated response teams were to be established, consisting of forfeiture-related mutual legal assistance experts, to be deployed at the request of victim States;

(b) Asset recovery case coordination would be boosted by establishing case-specific coordination task forces to help process responses to mutual legal assistance and forfeiture requests;

(c) Asset recovery workshops would be held at the regional level, as appropriate and in coordination with existing regional and international organizations, including UNODC.

11. In addition, the ministers agreed to ensure that the States of the Group of Eight would adopt laws and procedures to detect, recover and return the proceeds of corruption. At the Sea Island summit, on 10 June 2004, the Heads of States of the Group of Eight expressed their support to the commitments made at the meeting of their Ministers of Justice and Home Affairs.

12. In December 2005, the Group of Eight held an asset recovery workshop in Nigeria to discuss practical steps to help African countries repatriate stolen assets.

13. At the St. Petersburg summit, on 16 July 2006, the leaders of the Group of Eight countries committed themselves to work with all international financial centres and the private sector to deny safe haven to individuals engaged in high-level corruption who illicitly acquire assets. In that framework, all financial centres were to be urged to attain and implement the highest international standards for transparency and the exchange of information. Further, the Group of Eight stressed its commitment to assist in preventing corruption and enhancing capacity in that area.

Organization for Economic Cooperation and Development

14. Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,² adopted by the Organization for Economic Cooperation and Development (OECD) on 21 November 1997, have acquired experience in asset recovery by implementing article 3, paragraph 3, of that Convention, on seizure and confiscation in their domestic legislation. The OECD Working Group on Bribery in International Business Transactions monitors implementation of such legislation and the policies and practices of the parties with regard to requests for seizure and confiscation received from foreign jurisdictions.

² *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

15. The Network on Governance of the Development Assistance Committee (DAC) of OECD provides an intergovernmental forum in which international donors seek to improve the effectiveness of development aid. The Paris Declaration on Aid Effectiveness, endorsed in 2005, sets out a practical plan for donors to help improve the quality and positive impact of development aid. Within that framework, donors have committed even greater support to the anti-corruption efforts of developing countries by aligning their efforts with country-led initiatives and promoting local ownership of anti-corruption reforms. Programmes by developing countries to strengthen procurement and financial management systems are a specific area of focus. An overarching theme in the work of donors to fight corruption is policy coherence: ensuring that policies to achieve one aim, such as the recovery of assets diverted from development goals, are not undermined by other policies, such as banking secrecy. The ratification and implementation of international agreements such as the United Nations Convention against Corruption are part of a coherent donor approach.

16. The policy paper on anti-corruption of the DAC Network on Governance of 22 September 2006 states that DAC should support efforts led by the United Nations to promote the ratification of the United Nations Convention against Corruption by DAC members and other States Members of the United Nations and encourages its members to integrate their joint anti-corruption initiatives with other ongoing efforts to monitor and implement the Convention on the ground. According to the policy paper, DAC should encourage its members to actively support proposals for a mechanism to recover stolen assets, to be made at the first session of the Conference of States Parties to the United Nations Convention against Corruption.

Commonwealth Secretariat

17. In the Aso Rock Commonwealth Declaration on Development and Democracy: Partnership for Peace and Prosperity, adopted at the Abuja summit in December 2003, the Commonwealth Heads of Government pledged maximum cooperation and assistance among their Governments to recover assets of illicit origin and to return them to their countries of origin. To that end, the Commonwealth Working Group on Asset Repatriation was established to examine the issue of recovery of assets of illicit origin and the return of those assets to their countries of origin, focusing on maximizing cooperation and assistance between Governments, as well as to prepare a report with specific recommendations for the advancement of effective action in that area. UNODC was invited to participate as an observer in the meetings of the Working Group. The first meeting of the Working Group on Asset Repatriation was held in London from 14 to 16 June 2004 to discuss issues relating to the misappropriation of assets, civil asset forfeiture, the movement of funds, the tracing of and trafficking in assets, mutual assistance, the restraint of assets, the return of assets and the use of the Harare Scheme, which is a commitment by ministers of justice of the Commonwealth countries to provide mutual legal assistance in criminal matters. The Working Group presented a report with specific recommendations for the advancement of effective action in asset repatriation at the Meeting of Commonwealth Law Ministers and Senior Officials held in Accra from 17 to 20 October 2005. The Commonwealth Secretariat has also worked on model

legislative provisions on the civil recovery of criminal assets, including terrorist property.

World Bank Group

18. The World Bank views good governance and anti-corruption as central to its poverty alleviation mission. Anti-corruption activities of the World Bank Group focus on internal organizational integrity, minimizing corruption in projects funded by the World Bank and assisting countries in improving governance and controlling corruption. In its new strategy for heightening its focus on governance and anti-corruption, which was introduced on 6 September 2006, the World Bank supports the implementation of key international conventions such as the United Nations Convention against Corruption. It intends, inter alia, to help enhance the ability of countries to trace, freeze and confiscate the proceeds of corrupt behaviour, including through the provision of technical assistance for asset recovery.

Other organizations dealing with money-laundering

19. A number of organizations are involved in the fight against money-laundering. Their work, while not sufficient, has direct relevance to asset recovery efforts. The Financial Action Task Force on Money Laundering is the most prominent of those organizations. Its "Forty-plus-nine" Recommendations, which were last revised in 2003, provide a detailed set of measures to counter money-laundering. According to recommendation 6, in relation to politically exposed persons, financial institutions, in addition to performing normal due diligence measures, should implement the following measures:

- (a) Appropriate risk management systems to determine whether the customer is a politically exposed person;
- (b) Senior management approval for establishing business relationships with such customers;
- (c) Reasonable measures to establish the source of wealth and source of funds;
- (d) Enhanced, ongoing monitoring of the business relationship.

20. Other organizations active against money-laundering are the Egmont Group, the Customs Cooperation Council (also called the World Customs Organization) and regional bodies such as the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Inter-American Drug Abuse Control Commission (CICAD), of the Organization of American States, the Eastern and Southern Africa Anti-Money Laundering Group and the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures.

International Centre for Asset Recovery

21. The International Centre for Asset Recovery is part of the non-profit Basel Institute on Governance, associated with the University of Basel, Switzerland.

Established in July 2006, the Centre is to begin operation in 2007. The objective of the Centre is to provide training to officials from developing countries and equip them with effective information technology tools. Follow-up consultancy by asset recovery experts and an online knowledge centre will assist recovery work. In addition, the Centre plans to conduct applied research on advanced techniques and developments in the area of asset recovery, using tools such as case studies and surveys.

22. The Centre plans to convene an expert group meeting in cooperation with UNODC to explore, based on experiences with cases of asset recovery, the application of the relevant provisions of the United Nations Convention against Corruption and the legislative, institutional and capacity-building measures that might be required to ensure full implementation of the chapter on asset recovery in the Convention.

V. The way forward

A comprehensive asset recovery programme

23. In all consultations on corruption, asset recovery has consistently emerged as a top priority. Effective asset recovery will help countries redress the worst effects of corruption, while sending a strong message to corrupt officials that there will be no place to hide their illicit assets. It is thus crucially important that the Conference of the States Parties identify the best way forward. A comprehensive asset recovery programme must address three main challenges:

- (a) The limited knowledge of States parties on how asset recovery will be carried out successfully under the Convention;
- (b) The lack of expertise and capacity, especially in developing countries;
- (c) Securing the necessary political, substantive and financial support.

Creating a centre of expertise

24. Asset recovery is a complex area for Governments. Some experience has been gained from recent cases involving grand corruption. However, there are few common elements in those cases, and their resolution was based on divergent legal and practical arrangements. Thus, many practical questions remain, such as the important question of the impact of the Convention and how its implementation will change asset recovery practice. It is necessary to collect and study in a systematic manner existing experience and practice to draw useful conclusions, and then to study, in an equally systematic manner, the best way to put the Convention into practice. In order to address those challenges, the Conference may wish to consider naming a group of international experts to act as an advisory committee on asset recovery. Such experts would advise the Conference and UNODC on future programmes and provide concrete expertise on ongoing asset recovery efforts. The expert group would form the backbone of expertise for activities conducted under any of the five pillars described below.

(a) Needs assessment

25. The institutional, legal, technical and other difficulties which hamper the recovery of assets are to be comprehensively assessed, and guidance is to be provided on how to overcome obstacles in collaborating with the authorities of countries where assets are allegedly located.

(b) Legal advisory services

26. Legal advice is to be provided to ensure full incorporation of the provisions of the Convention in domestic laws, particularly with respect to developing a comprehensive system for asset seizure and confiscation. In that context, emphasis would be placed on strengthening domestic criminal justice systems to enable successful prosecution of predicate offences and the compilation of requests that meet the highest standards, thus greatly improving their chances of success.

(c) Strategic planning and case-management support

27. Technical expertise and policy advice are to be provided in support of strategic planning in asset recovery. Developing programmes are to be established to assist countries on an ongoing basis in case management and capacity-building through on-the-job training in handling domestic investigations and prosecutions, as well as requests for mutual legal assistance and international cooperation for the purposes of confiscation.

(d) Capacity-building and training

28. Regional and national training programmes are to be developed to build the capacity of police, prosecutors and members of the judiciary. Such training seminars would include the use of existing tools such as the UNODC Mutual Legal Assistance Request Writer Tool; case studies on mutual assistance and the confiscation and recovery of assets; and hands-on preparation of court documents and mock applications for asset restraint and confiscation orders before serving judges.

(e) Partnership-building and information-sharing

29. Activities are to be conducted to enhance information-sharing among States, such as meetings of central or competent authorities responsible for international cooperation casework in specific regions or on an interregional basis.

30. Without neglecting the other parts of the Convention, each of which is of distinct importance, asset recovery may become the litmus test of the effectiveness of the Convention as a practical tool for fighting corruption. Building a comprehensive programme should be one of the top priorities of the Conference of the States Parties. That entails careful thinking about the components of such a programme and a readiness to make the necessary resources available.