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**Conference of the States Parties to the United Nations  
Convention against Corruption**  
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**Results of the informal consultations on the implementation  
of the United Nations Convention against Corruption held  
in Lisbon from 22 to 24 March 2006 and in Buenos Aires  
from 30 October to 1 November 2006**

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# **Informal consultation of the Friends of the Helsinki Process and the Friends of the United Nations Convention against Corruption on the implementation of the United Nations Convention against Corruption, held in Lisbon from 22 to 24 March 2006**

## **Co-Chairs' summary**

### **I. Introduction**

#### **Background**

An informal consultation was convened at the initiative of Finland and Portugal to discuss ways and means that the Conference of States Parties (CSP) of the United Nations Convention against Corruption (UNCAC) may employ to discharge in a successful and efficient manner its challenging mandate, outlined in paragraph 4 of article 63 of the Convention. It was understood that the meeting was intended as an opportunity for dialogue and to permit countries to prepare better for the CSP. The meeting was not geared towards the development of common positions or designed as a forum to seek agreement on issues. This is a summary of the discussions by the co-chairs and should not be considered as a negotiated text by the participants.

Preventing and controlling corruption was one of the key topics discussed by the working groups of the Helsinki Process, a joint initiative of Finland and Tanzania, as well as the Helsinki Conference of September 2005. The Conference recommended promoting the implementation of the UNCAC by ensuring that an effective monitoring mechanism is developed by the CSP.

The third Lisbon Study Tour for the Portuguese-speaking Countries of November 2005, co-organized by UNODC and the Ministry of Justice of Portugal, was on the same wavelength, recommending as it did an enhanced participation in the CSP, in order to guarantee an effective implementation of the Convention.

The informal consultation meeting was held in Lisbon, from 22 to 24 March 2006. In view of the informal nature of the meeting, it was moderated by the representatives of Finland and Portugal. The representatives of Argentina and France, in their capacity as co-chairs of the Group of Friends of the UNCAC, accepted to moderate part of the discussions.

#### **Agenda**

The informal consultations meeting decided to structure its discussions along the following agenda:

1. Opening of the informal consultations.
2. Adoption of the agenda and organization of work.
3. Implementation of the United Nations Convention against Corruption and the role of the Conference of States Parties

- (a) Review mechanisms of other international legal instruments;
  - (b) Preparations for the Conference of States Parties.
4. Technical assistance and implementation of the United Nations Convention against Corruption.
  5. The way forward.
  6. Closing of the informal consultations.

## **II. Attendance**

The meeting was attended by representatives of the Friends of the Helsinki Process governments and the Friends of the UNCAC governments as well as Bolivia as the current Chair of the Group of 77 and China. The following States were represented: Algeria, Argentina, Austria, Bolivia, Brazil, Canada, China, Egypt, Finland, France, Japan, Jordan, Malaysia, Mexico, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Russian Federation, South Africa, Spain, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

The following intergovernmental organisations supporting respective implementation mechanisms were represented by observers: United Nations Office on Drugs and Crime, European Commission, Group of States against Corruption (GRECO) and Organization for Economic Cooperation and Development (OECD).

## **III. Summary of discussions**

### **General**

The informal consultations meeting was opened by H.E. Mr. Alberto Costa, Minister of Justice of Portugal who reiterated his country's commitment to ensuring the full implementation of the UNCAC and to contributing to enhanced international cooperation to that purpose. The initiative of Portugal to act as host to the informal consultations meeting was an effort to offer to countries an opportunity to begin an active and open dialogue essential in developing considerate and informed views on such a delicate and complex matter as the review of the implementation of the Convention by the CSP.

The participants to the informal consultations meeting expressed their gratitude to the Governments of Finland and Portugal for their initiative to convene and host the meeting. They also commended the leadership role exercised by Argentina and France in their current function as Co-Chairs of the Vienna-based informal group of the Friends of the Convention. They recalled with appreciation the contribution of Norway and Peru, on whose initiative the Group was established in 2003, and of Austria and Egypt that had served as Co-Chairs of the Group.

The view was shared that the Group should be encouraged to continue acting as the rallying point of efforts to promote the Convention. Following the entry into force of the Convention, the Group should be encouraged to gear its activities towards

supporting implementation of the Convention and ensuring appropriate preparations for the efficient and effective functioning of the CSP.

At the same time, it was felt that the initiative to offer countries a forum where dialogue could be undertaken at a governmental level on these issues, especially on enhancing the capacity of the CSP to consider ways and means of discharging its mandated function of reviewing and supporting implementation of the Convention were welcome and commendable. This was particularly the case in view of the improved representation offered by extending the consultations to include the countries that participated in the Group of Friends of the Helsinki Process and further enhancing the consultations by including Bolivia as the current Chair of the Group of 77 and China. The combined composition of the informal consultations provided a good initial platform that could be used as a launch pad for a gradual expansion which would be necessary to safeguard the inclusive nature of a consultation process that would lead to in-depth discussion by the Conference of States Parties.

### **Key conclusions from UNODC regional and subregional seminars**

The meeting was briefed about progress in the promotion of the ratification and implementation of the Convention and the related activities of UNODC which included the organisation of seven regional or subregional seminars covering more than 100 countries and the production of a legislative guide. Key conclusions emerging from these activities included the following:

(a) There was the need to involve experts as early as possible in the work of the CSP in view of the highly technical nature of many of its provisions. Further, the CSP should be an opportunity for representatives of anti-corruption authorities to establish working relationships and benefit from each other's expertise and knowledge.

(b) There was need to build a solid knowledge base on corruption. In that context, there was an increasing desire to explore the feasibility of gradually moving from perception-based data to developing a scientific methodology of measuring corruption that would provide a more accurate picture.

(c) There was a need to seek ways to ensure the capacity of the CSP to discharge its function of reviewing the implementation of the Convention. It has been concluded that the Convention calls for a much more thoughtful approach to how the mandate of the CSP would be carried out. In that context, attention ought to be devoted to lessons learned from the experience gained from the operation of the Conference of the Parties to the UNTOC Convention.

(d) A cross-cutting question has been technical assistance as a key component of implementation and how the strong link between technical assistance and implementation established by the Convention itself could be maintained and further strengthened.

The consistency with which these issues had emerged in almost all regions of the world led to some key conclusions.

First, that there was a clear evolution in thinking among countries about the importance of focusing efforts to ensuring efficient and effective review of implementation of the Convention by the CSP. The issue remained delicate and fraught with complexity because of the broad scope of the Convention, while its global nature created the need to devise adequate but also feasible ways to achieve that goal. However, it was clear that there was a renewed sense of purpose and that certain ideas which had caused widespread scepticism during the negotiations of the Convention no longer did so.

Second, there continued to exist strong momentum for a genuinely collaborative, inclusive and pragmatic approach to implementation that was akin to the spirit that made the Convention possible and allowed negotiations to find innovative solutions to a broad range of complex issues in a way that ensured the high quality of the instrument.

Third, there was unwavering commitment of states to spare no effort in discharging their incumbent function of cooperating in implementing the Convention.

Fourth, there was a heightened sense of responsibility caused by the increased awareness of the need to join forces in fighting corruption which had been brought about by the Convention. At the same time, the successful negotiation of the Convention and its expeditious entry into force had created increased hope and heightened expectations among the public at large and the media.

### **Prerequisites to ensuring the adequate implementation of the United Nations Convention against Corruption**

The informal consultations meeting expressed appreciation for the opportunity to be informed about the essential characteristics, the operations and the results of mechanisms designed to monitor other existing international legal commitments and supported by the Council of Europe, the OECD, the European Commission, African Union and the OAS. Participants also appreciated the opportunity of receiving clarifications and engaging in dialogue with representatives of some of these organisations, who attended the meeting as observers.

Participants highlighted certain prerequisites to ensuring adequate implementation of the Convention. These included continued efforts to promote the ratification of the Convention, so as to increase and broaden the participation of States in the CSP and enable the attainment of the full potential of the Convention that stems from its global nature. There was satisfaction with the results of the regional and subregional seminars organised by the UNODC for that purpose, and there was encouragement to continue these activities, taking into account and building on such results. The need to make available to as many developing countries as possible legislative assistance towards ratification and implementation of the Convention was also emphasized.

## **Key characteristics of the United Nations Convention against Corruption offering a basis for review of implementation**

Further, participants highlighted some key characteristics of the Convention that offered a good basis for effective and efficient review of its implementation. More specifically:

(a) The Convention was predicated on the shared realisation that corruption was a problem affecting all countries and all societies and was no longer a purely domestic issue. Thus, the Convention held the least potential of lending itself to political controversy along lines of division that might exist in other issues between developing and developed countries;

(b) The Convention was the product of a broad and genuine global consensus that was freely entered into. That consensus was also manifested by the high rate of signatures and the rapidly growing number of ratifications or accessions. In that light, discharging the obligations foreseen by the Convention was an established commitment;

(c) The provisions of the Convention on implementation and, more specifically, on the mandate of the CSP, were formulated in a way that accentuated a positive, constructive and supportive approach. This formulation, further strengthened by the inclusive nature of the entire Convention, left little room for doubts about intrusiveness in the review of implementation. Rather, review of implementation had been conceived as a process of mutual support and encouragement as well as learning and sharing of experiences among peers with high regard for equality and respect for sovereignty and diversity;

(d) The Convention was designed as a living operational tool, with purposes and objectives clearly set out in a carefully balanced manner. In that context, it was a powerful engine of partnership and provided a framework that prescribed action at the domestic level as a pillar of effective international cooperation and vice versa.

## **Key elements of the review of implementation by the Conference of the States Parties**

The discussion then revolved around key elements of the review of implementation by the CSP. In that context, there was discussion about lessons that had emerged from the operation of the Conference of the Parties to the UNTOC Convention. That Conference of the Parties had begun charting its course and developing its working methods without an early preparatory process that would afford the opportunity to States to exchange views, focus their attention and outline issues that required more in-depth analysis. Thus, the Conference of the Parties had taken a longer than expected time to determine how it would organise its work and discharge its functions. It established a programme of work that was intended to help it build a knowledge base about the status of implementation and challenges facing countries in such implementation. For that purpose, it instructed the Secretariat to collect information on the basis of questionnaires that it reviewed and approved.

Faced with a low rate of responses, the Conference of the Parties took important decisions that highlight the legal obligation of States Parties to furnish it with the

required information. It also focussed on issues of compliance that emerged from the analysis of the information provided. Further, the Conference of the Parties decided at its second session to establish a working group on technical assistance to review needs emerging from the responses of states parties and advise the Conference on how such needs should be met.

The process of reviewing implementation of the Convention by the CSP could be structured along a multi-stage gradual approach. It was understood in that context that implementation and its review were long-term processes and had to be approached as such. That was a result of several factors, including the volume and complexity of the provisions and obligations of the Convention, the growing number of States Parties and the fact that countries were at different levels of development and had divergent levels of capacity.

### **Stages of reviewing implementation**

The first stage of reviewing implementation would involve determination of the scope of the review i.e. which provisions or sets of provisions would be looked at in which order. It was pointed out that such a determination was necessary because of the broad scope of the Convention and the multitude of its provisions and consequent obligations. Caution should be exercised in making such determination in order not to upset the careful equilibrium on which the Convention was based, and the integrity of the instrument in view of the fact that the Convention had been deliberately designed in a way that its provisions were mutually supportive.

One way of approaching this issue might be to determine the scope of the basis of the level of obligations, beginning with those of directly mandatory nature. Another way might be to focus on the types of actions required by States Parties for the implementation of obligations, combined with an eventual shift from the enabling phase (e.g. legislation) to the functioning phase (e.g. institutions and application of legislation).

Once this determination was made, a three-step approach could be envisaged. Experience has shown that the point of departure for review of implementation was the accumulation of knowledge through the collection and analysis of information in a structured and systematic way.

However, an effort should be made to find ways of collecting information different than the more traditional questionnaires, as experience has also shown that in spite of their usefulness in standardising responses and thus permitting comparability and analysis, there were problems that authorities faced in providing responses. A way of avoiding questionnaires and simultaneously putting the accent on a country's sense of ownership and respect for its commitment and sense of responsibility would be to begin the process through a self-assessment report. Such a report could be prepared based on a set of guidelines, or a checklist that the Secretariat could develop under the guidance of the CSP. Technical assistance should be available to countries requesting it to perform such self-assessment and compile the relevant report. The self-assessment report would also identify gaps in implementation and include the needs in technical assistance to fill those gaps, as appropriate. The self-assessment report could be accompanied by an action plan with specific ways to address matters of compliance, including time frames for the required actions.

The second step would be the undertaking of the required actions identified in the action plan, together with the provision of technical assistance based on the needs identified, as well as action on any recommendations that the CSP may have offered.

The third step in the review process would be an assessment of progress made and achievement of the actions undertaken, together with a review of follow-up that might be required.

A process structured along these lines would permit attention to turn to other key issues associated with the review of implementation and the functioning of the CSP. Such issues could include the time frame of each step and, consequently, the periodicity of the review process, as well as the determination of the most appropriate model of a mechanism that would support the process and the CSP in discharging its functions as the only decision-making body in matters related to the implementation of the Convention. Such determinations would in turn enable an informed debate on matters related to the financing of the process and support mechanism, as well as a more detailed description of the functions that the Secretariat would be assigned to perform and its consequent requirements.

The method described above would combine two approaches which were felt to have clear merit. These were the encouragement and the compliance approach which would need to be carefully balanced. The method was also felt to present the benefit of gradual movement from phase to phase that was considered to be important in building and sustaining confidence in the process which was a key prerequisite to full participation, credibility and legitimacy.

### **Methods for reviewing implementation**

The discussion then turned to the need to ensure the involvement of experts and the review of implementation. The matter was approached in several ways.

First, there was a need to involve experts in examining a number of very technical provisions of the Convention. Such need had been identified also by the Conference of the Parties of the UNTOC Convention which had established groups of experts to consider issues related to international cooperation. In view of the cross-cutting nature of international cooperation and its key importance in the Convention, as well as the nature of asset recovery as a fundamental principle of the Conventions, there were two areas where the involvement of experts was crucial.

Second, it could be useful to foresee the involvement of a representative, yet functional group of experts that would help the CSP review the self-assessment reports in a systematic and comprehensive manner, by considering, analysing and synthesising the information contained in such reports. This aspect was deemed essential in view of the sheer volume of information that could be expected and the need to avoid flooding the CSP with raw material, an approach that would entail the risk of a superficial review of implementation. Suggestions were made about the possibility of a standing group of experts to carry out reviews on behalf of the CSP and report to it, and considerable discussion took place on the advisability, timelines and composition of such a group and whether experts should be appointed by governments or asked to serve in their individual capacity.



Considerable discussion was held also about the concept of peer review. The considerable merit of peer review was highlighted as an attribute of the review process that would lend such process credibility and objectivity. It was suggested that the CSP itself was a peer review forum and the question would then not be whether peer review should be established but how that quality of the CSP should be made to support its more efficient and effective functioning.

It was pointed out several times during the discussion that a well functioning, efficient and adequately resourced Secretariat with the requisite expertise was crucial for the success of the CSP's endeavours. It was understood that the mandate of the Secretariat was described in Article 64 of the Convention and that its functions and requirements would need to be reviewed and taken care of depending on the way that the CSP would decide to perform its review functions, including in the event of establishment of mechanisms to support such review.

### **Technical assistance**

In addition to highlighting the importance of technical assistance in the preceding discussion, and its role at various stages of the implementation and its review process, the meeting discussed the need to ensure inter-agency cooperation and coordination of technical assistance.

Following questions about the nature and sources of technical assistance, it was clarified that technical assistance was provided from both bilateral and multilateral donors. For the United Nations, the bulk of technical assistance was provided through voluntary contributions by donors. The challenge ahead was how to ensure the mainstreaming of the Convention and its implementation in technical assistance activities.

### **Way forward**

Several suggestions were made about the way forward. The suggestions that seemed to gain most support were:

(a) The issues discussed and ideas presented in the informal consultations meeting should be discussed in regional groups in Vienna in order to further enrich the debate and should be shared with as many delegations as possible. Delegations should be encouraged to report back to their capitals. Discussions could also be organised in the margins of coming events such as the annual session of the UN Commission on Crime Prevention and Criminal Justice in April 2006 and the Conference of the Parties of the UNTOC in October 2006.

(b) The active and continuous involvement of Permanent Missions to the UN in Vienna is crucial for advancing consultations regarding the review of the implementation of UNCAC, especially in the framework of the Group of the Friends of the Convention. At the same time, there is merit in and benefit to be derived from including representatives from capitals in consultations. If it is deemed necessary to hold other informal consultations meetings, those should not be held too close to the Conference of States Parties and at least the last such meeting

should be held in Vienna. It would also be fruitful to have broader participation in possible future meetings.

(c) Efforts to provide issues to be taken on the agenda of the first CSP could be considered. Drafting a non-paper on reviewing the implementation of UNCAC for the Conference could also be considered.

# **Informal consultation on the implementation of the United Nations Convention against Corruption held in Buenos Aires from 30 October to 1 November 2006**

## **Co-Chairs' summary**

### **I. Introduction**

#### **Background**

An informal consultation was convened at the initiative of Argentina and Finland to discuss ways and means that the Conference of States Parties (CoSP) of the United Nations Convention against corruption (UNCAC) may employ to discharge in a successful and efficient manner its challenging mandate, according to article 63 of the Convention. The meeting was intended as an opportunity for dialogue and exchange of view to permit countries to prepare better for the CoSP and explore ideas that might form the basis for decisions to be considered by the CoSP. This is a summary of the discussions by the co-chairs and should not be considered as a negotiated text by the participants.

The meeting built on the informal consultation meeting of the Friends of the Helsinki Process and the Friends of the UNCAC held in Lisbon in March 2006, as well as the work of the Friends of the UNCAC and the open-ended consultations organised by UNODC in Vienna on 6 October 2006.

The informal consultation meeting was held in Buenos Aires from 30 October to 1 November 2006. In view of the informal nature of the meeting, it was moderated by the representatives of Argentina and Finland.

#### **Agenda**

The informal consultation meeting decided to structure its discussion along the following agenda:

1. General exchange of views.
2. Technical assistance.
3. Asset recovery.
4. Mechanisms for review of the implementation.
5. General conclusions.

### **II. Attendance**

The meeting was attended by representatives of the following 32 States: Algeria, Angola, Argentina, Austria, Bolivia, Brazil, Canada, Chile, China, Colombia, Egypt, Finland, France, Germany, Indonesia, Japan, Malaysia, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Romania, Spain, Switzerland, Turkey,

United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

### **III. Summary of discussions**

#### **Opening**

The informal consultation meeting was opened by the Deputy Minister of Foreign Affairs of Argentina, who recalled the contribution made by informal preparatory meetings organised before the beginning of the negotiation processes of the United Nations Convention against Transnational Organised Crime and the UNCAC. Those meetings had been held in the same venue and had proved instrumental in garnering common understanding that subsequently translated into proposals and decisions that enjoyed broad support. The Deputy Minister expressed the hope that the current meeting will follow that tradition and contribute to the success of the first session of the CoSP to which his country attended great importance.

#### **General exchange of views**

Over 70 countries had already ratified the UNCAC, and the number was expected to rise closer to 80 by the first session CoSP. This would be a critical mass for making the important decisions expected from the CoSP.

The open-ended consultations in Vienna and the work of the Friends of UNCAC had provided input to the preparation of the draft annotated agenda for the CoSP. The informal consultation process had helped identify key issues that the CoSP would discuss and on which decisions would be expected. The annotations of the provisional agenda reflected these issues, in order to assist delegations in focusing their preparations. These main issues will be the review of implementation of the Convention, asset recovery and technical assistance. Regarding review of implementation, the Conference would need to consider and decide on how to discharge its mandated function and fulfil the growing expectations in this area in the most efficient way.

Asset recovery was a key issue because the relevant provisions are among the most innovative of the Convention: Chapter V includes entirely new provisions and creates a new dynamic by combining new provisions with more traditional ones, such as those related to international cooperation for the purposes of confiscation. Technical Assistance is a crosscutting issue that is inseparably linked to implementation.

Three side events are being prepared for the CoSP: a forum for parliamentarians (GOPAC, IPU and others), a forum for anticorruption authorities (with IAACA) and a forum for civil society and the private sector (e.g. TI and Global Compact).

## **Technical assistance**

The efforts already made by the UNODC to provide technical assistance for the implementation of the UNCAC were presented. UNODC had done significant work to promote the ratification of the Convention through regional and subregional workshops, in cooperation with the regional organisations and involving a broad range of representatives of governments. One of the purposes of the workshops has been to raise awareness of the implications of the Convention among those who will actually be directly involved in implementing it.

UNODC had also been implementing a number of projects, including on judicial integrity, a field where UNODC had particular added value to offer. In addition, UNODC developed a Legislative Guide for the ratification and implementation of the Convention and was developing a Technical Guide, addressing additional steps that would be needed by States parties to implement the Convention.

Further, UNODC was supporting the International Group against Corruption (IGAC), a forum bringing together other agencies and international organizations active in providing technical assistance in the area of action against corruption.

The framework offered by the UNCAC comes at an auspicious time. The issue of action against corruption is high on the agenda of donor countries and agencies, and the trend is for resources devoted to this area to increase. The result has been a multitude of activities, which is recognised as a positive development, but also creates challenges of coordination and coherence. The priority of the Convention has also resulted in a gradual shift in interest in its follow-up.

In addition to Ministries of Justice, which were naturally involved in following the development and implementation of the Convention, more recently there has been increased involvement of Foreign Ministries and Ministries or departments responsible for development assistance. This was a welcome development as it reflected another trend: the increasing realisation that the effectiveness and impact of development assistance could not be viewed separately from efforts to prevent and fight corruption. The important decisions made by the Development Assistance Committee (DAC) of the OECD were an example of the need to place the Convention at the centre of related work. It was in everyone's interest to take advantage of the CoSP to seek ways of effective coordination of anticorruption related technical assistance. The CoSP was well placed to function as an umbrella forum where financing institutions, such as the Multilateral Development Banks, and donor agencies (bilateral or multilateral) could find common ways of ensuring that the Convention is used as the point of reference and framework of their work, as well as the benchmark of gauging effectiveness and impact. Further, providers of technical assistance should take the opportunity offered by the Convention and the CoSP to seek ways of better coordination, complementarity and synergies to better channel their efforts in promoting and supporting the implementation of the Convention. The Convention also offered a useful framework for the development of measures to safeguard development assistance resources.

The interlinkages between technical assistance and implementation of the Convention were reiterated. Technical assistance should be provided at key stages of the implementation process, starting with information gathering, and address the needs and difficulties identified through such information gathering.

Performance indicators or benchmarks were recommended as a useful approach to establish a baseline for technical assistance needs, which could also allow for the prioritisation of technical assistance needs. The information gathered from States parties would be important both for identifying technical assistance needs and best practices or lessons learned.

It was suggested that the CoSP should establish a working group to assist in identifying technical assistance needs and determine priorities for the formulation of technical assistance activities.

The UNODC was asked to prepare a paper for the CoSP on technical assistance for the implementation of the UNCAC.

### **Asset recovery**

Asset recovery was identified as one of the priority areas of the UNCAC. It was noted that the provisions for asset recovery in the UNCAC are unique and their effective implementation requires early attention by the CoSP. Current experience on asset recovery derives from a number of cases, usually involving high-level former officials. Beyond that element, common features were few, as there were different sets of facts, and there were differences in the handling and disposition of cases. As a result, knowledge and lessons learned were dispersed and not readily available. Lack of knowledge was an issue also regarding how the provisions of the Convention would operate and what results they would produce. Consequently, there was an urgent need to develop such knowledge, collect available expertise and begin identifying specific knowledge management options. In this connection, UNODC should develop practical tools to capture and systematise available expertise and help countries to organize their actions and identify the best ways and means of implementing the relevant provisions of the Convention.

The asset recovery Chapter, in contrast to other chapters, is far more likely to require changes in the legislation of both requesting and requested countries. There were no rigid distinctions between requesting and requested countries and little difference in measures required of developed and developing countries for the adequate implementation of the Convention's provisions.

This facilitated common action and created an environment that would be conducive to consensus. That was a necessary pillar for the CoSP to address the two main issues in this area: first the most appropriate ways of bringing about attitudinal and behavioural change among national authorities to the whole concept of asset recovery and return; and second, identifying the most effective means of overcoming still existing legal obstacles to asset recovery.

Several suggestions were made regarding actions that could be taken to facilitate asset recovery. It was suggested that countries may wish to create specialized structures within their administration to recover proceeds of different crimes and to provide training to their personnel. Having a carefully designed structure with specialized personnel with sufficient knowledge and expertise to pursue cases in foreign jurisdictions, and domestic capacity for coordination, may be very useful.

Requested countries should assist requesting countries in providing sufficient evidence to meet the requirements of domestic legal provisions. Recipient countries

could also be encouraged to include in their domestic legislation proactive cooperation provisions and specific procedures allowing prosecutorial, FIUs and appropriate regulatory and judicial authorities to forward relevant information to foreign countries' authorities.

Capacity building was a key priority in the long term, but there was a clear need to provide assistance to handle asset recovery cases in the short term, as an important way to demonstrate the commitment of the States parties to this innovative chapter of the Convention. With regard to capacity building, the importance of identifying and collecting work already under way was highlighted.

The areas where action would be expected from the CoSP were identified as: creating a solid body of knowledge and initiating the development of practical tools to foster and strengthen expertise in both requesting and requested states; identifying specialised expertise and finding ways of making such expertise available to countries that needed it; working towards comprehensive capacity building activities and programmes as a longer term objective, as part of the overall capacity building initiatives for the implementation of the Convention, while addressing the immediate needs of States parties.

The question was how to achieve these objectives. The creation of a Trust Fund to provide technical assistance for asset recovery in the short term was discussed.

While the establishment of a new fund was not a simple matter, it was recognized as a powerful signal of political will and commitment. It was also suggested that the CoSP should be able to monitor progress of efforts on asset recovery, as a way of building trust and confidence among States as a key component of all forms of international cooperation.

## **Review of implementation**

The question of reviewing the implementation of the Convention had been very delicate during the negotiations and remained so. However, a basic understanding was clearly emerging to the effect that the mandate of the CoSP was considered of crucial importance and had created high expectation which, if frustrated, would adversely affect the credibility and diminish the power of the Convention.

The CoSP had to explore what types of mechanisms were at its disposal and it would establish to support the review of implementation in the most efficient and effective way. In this connection, the clear recommendation contained in paragraph 18 of the IAACA Declaration was a very welcome development.

The two features that distinguished UNCAC from other existing Conventions were its broad scope and its global nature. This meant that the lessons, which can be drawn from existing models under other Conventions, were limited. There were, however, useful sources of inspiration to be found in other global conventions and their implementation bodies. The example of the environmental conventions, including the Montreal Protocol, was referred to. The main objective of the CoSP should be to decide on the kind of review mechanism to be developed and agree on its terms of reference, perhaps though a process of identifying what the mechanism should be, and clearly setting out what it should not be.

It was understood that implementation and its review are long terms processes and have to be approached as such. Many participants suggested that the process of reviewing the implementation of the Convention could be structured along a multistage, gradual approach.

The first session of the CoSP would need to come to some common ground on how to gather information, how to use the information gathered, and on the substantive priority provisions to focus on at the beginning. This could be combined with the development of a multiyear programme of work that the CoSP would develop. The mutually supportive nature of the different provisions of the Convention would call for a broad enough scope to cover at least some provisions from each chapter, but as a matter of practical necessity the CoSP should take a more focused approach, dealing with very specific provisions, such as those related to criminalisation or the unique provisions related to prevention and asset recovery, which are not covered by other Conventions.

The three-stage approach discussed in Lisbon could be a framework for the structure of a review programme. The initial stage would take the form of a self assessment, with the help of a checklist of issues to be considered and detailed advice on the types of information required. The CoSP could also consider the feasibility of employing different methods to different parts of the Convention, depending on their nature. For example, doing a questionnaire to evaluate criminalisation and a self assessment report and expert group review to assess the situation in prevention of asset recovery. The importance of creating an expert group to assist the Secretariat in processing the information gathered for the CoSP and to continue the review process in between the regular sessions was stressed.

The question of how to make use of the information gathered was raised and it was suggested that such information could be shared more broadly with other bodies in order to strengthen the role of the UNCAC as a framework for coordinating the fight against corruption.

Any review mechanism would require predictable and sustainable funding. The source of such funding was discussed and it was pointed out that in formulating positions and reaching decisions, States parties and the CoSP should pay special attention to this matter. Sustainability and predictability, with the added features of objectivity and impartiality, were the key characteristics of the regular budget of the United Nations. A determination would need to be made about the source of funding of the activities of the CoSP and any mechanism it would establish to assist it with the review of implementation.

Another issue to be considered by the CoSP was the need to avoid duplication with existing implementation review mechanisms. It was noted, however, that this was by no means a significant problem, and it was likely the solution would emerge in practical terms because if a country had already collected information on a certain issue, it could make use of that information to satisfy the requirements of the CoSP. It was suggested that the Secretariat prepare a paper on the issue of creating a review mechanism for the CoSP.

Creating a review mechanism was not a simple matter and required satisfactory answers to many questions. Such answers might not be readily available because of the absence of concrete knowledge on several parameters of a new mechanism. In order to find answers to these questions and allow for more time to enable States



parties to ponder the particulars of review of implementation and reach policy decisions, it was suggested that a voluntary programme be put in place. The programme would involve a limited number of countries which will volunteer to participate, cover a predetermined scope of Convention provisions, have clear terms of reference predetermined by the CoSP, run for a limited period of time and report to the CoSP to facilitate its work on the design of an integrated approach to review of implementation.

Regardless of the specific modalities of the mechanism selected, it was recognized that the process of review needed to include the following steps:

- A solid base of gathered and assessed information from parties;
- Expert evaluation and analysis of the information by governmental experts;
- The development of observations with respect to the state of implementation of the Convention;
- The development of recommendations for technical assistance.

Special attention was required to make sure that any voluntary programme did not lead to a two tier approach to the review of the implementation of the Convention.

### **The way forward**

The CoSP will be judged on the record it will establish already at its first session. Key decisions will need to be reached on all three main issues on which the CoSP is expected to focus its deliberations.

On technical assistance, the CoSP should seek ways to identify and prioritise needs for technical assistance, based on information provided by States parties. The CoSP should also determine ways of placing the Convention at the centre of and as a framework for technical assistance and development assistance activities.

The establishment of a working group with a precise mandate and clear focus on the achievement of those objectives would be a good way of going forward. Further, the Secretariat should invite MDBs, other departments and offices of the United Nations, other relevant international organisations and development agencies to attend the CoSP and engage in consultations at the Conference, with a view to strengthening coordination and working together to maximise the impact of technical assistance efforts and activities to promote and support implementation and application of the Convention.

On asset recovery, the CoSP should address the long term needs of States parties in capacity building, to be successful in preparing for and achieving asset recovery and return. In this regard, the CoSP should identify requirements in knowledge accumulation and management as well as in practical tools, and mandate knowledge acquisition, collection and creation of specialised expertise and the production of practical tools. The CoSP should also identify ways of addressing and meeting short term needs that States parties may have for successful asset recovery. In this context, the CSP should seek the most effective way of sending out a strong political signal of unwavering collective commitment to take immediate action to

promote and review the implementation of the relevant provisions of the Convention.

On review of implementation, the CoSP should design an effective and efficient mechanism to assist it in reviewing the implementation of the Convention, in accordance with article 63, including paragraph 7. In doing so, the Conference should determine the best way of collecting, analysing and using information; identify whether the approach to review, and the consequent collection and analysis of information, would be by clusters of provisions of the Convention and where review will begin; determine whether it will have a multi-session programme of work. The CoSP should elaborate the terms of reference of a review mechanism and examine the desirability and possibility of testing the feasibility and functionality of its review system through a time limited voluntary programme.

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