

INFORMAL CONSULTATION MEETING ON THE IMPLEMENTATION OF THE UNCAC

BUENOS AIRES, 30 OCTOBER–1 NOVEMBER 2006

CO-CHAIRS' SUMMARY

I. INTRODUCTION

Background

The informal consultation meeting 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 32 states. The list of participants is contained in Annex I.

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 attached 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 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 anti-corruption 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 sub-regional 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 organisations 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 anti-corruption-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 organise 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 specialised 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 recognised 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 through 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-term 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 multi-stage, 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 multi-year 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 pre-determined scope of Convention provisions, have clear terms of reference pre-determined 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 recognised 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.